TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 493

GENERAL GAS AND ELECTRIC CORPORATION,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 1, 1938.

CERTIORARI GRANTED JANUARY 3, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

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INDEX.

	Original	Print
Proceedings before United States Board of Tax Appeals.....	1	1
Docket entries	1	1
Petition	3	2
Exhibit "A"—Notice of deficiency	26	16
Statement	28	17
Exhibit "B"—Statement showing taxpayers engaged in related trades or businesses.................	106	72
Answer	107	73
Stipulation of facts................................	109	74
Exhibit "A"—Proceedings before Public Service Commission of Pennsylvania, Docket No. 13917—1925	116	78
Secretary's certificate..........................	116	78
Certificate of public convenience	117	79
Report and order..........................	119	80
Petition for certificate of public convenience....	121	81
Exhibits "E" and "F"—Resolutions of Boards of Directors...................	136	90
Exhibit "B"—Indenture of mortgage, February 1, 1916	142	94

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	Original	Print
Proceedings before United States Board of Tax Appeals—Continued.		
Memorandum opinion, Disney, M.	166	110
Decision	176	117
Petition for review	177	117
Notice of filing petition for review	186	122
Praecipe for record	187	123
Clerk's certificate (omitted in printing)	189	
Proceedings in U. S. C. C. A., Second Circuit	190	125
Opinion, Swan, J.	190	125
Petition for rehearing (omitted in printing)	193	
Orders denying petition for rehearing	198	130
Judgment	201	131
Clerk's certificate	203	132
Order allowing certiorari	204	132

[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 59,469

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DOCKET ENTRIES

Appearances:

For Taxpayer: Francis J. Sweeney, Esq.
For Comm'r: Chester Gwinn, Esq.

Transferred to Mr. Disney June 30, 1936

1931.
July 30. Petition received and filed. Taxpayer notified. (Fee paid.)
" 30. Copy of petition served on General Counsel.
Sept. 26. Answer filed by General Counsel.
Oct. 5. Copy of answer served on taxpayer. General Calendar.

1934.
Dec. 8. Hearing set January 28, 1935.

1935.
Jan. 3. Stipulation to consolidate with docket 59,470 and of facts filed.
" 28. Hearing had before Mr. Seawell on merits. On motion of parties dockets 59,470 consolidated with dockets 59,469, 52,639, 52,680 and 49,079. Submitted on stipulation of facts heretofore [fol. 2] filed. Petitioner's brief due in 60 days (March 29, 1935). Respondent's brief due 30 days thereafter. Petitioner's brief due in 15 days thereafter.
Feb. 1. Transcript of hearing of January 28, 1935 filed.
Mar. 29. Brief filed by taxpayer. March 29, 1935 copy served.
Apr. 24. Brief filed by General Counsel.
May 9. Reply brief filed by taxpayer. May 10, 1935 copy served.

Docket Entries—Continued

1937.

June 3. Memorandum opinion rendered, Richard L. Disney, Division 4. Decision will be entered under Rule 50.

Aug. 13. Motion for order of redetermination under Rule 50 filed by General Counsel.

" 16. Hearing set September 8, 1937 on settlement.

" 20. Consent to settlement filed by taxpayer.

" 24. Decision entered, Bolon B. Turner, Division 8.

Nov. 20. Petition for review by United States Circuit Court of Appeals (Second) with assignments of error filed by taxpayer.

" 20. Proof of service filed by taxpayer.

" 20. Præcipe with proof of service thereon filed.

[fol. 3] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 59,469

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION—Filed July 30, 1931

General Gas & Electric Corporation hereby petitions for a redetermination of an asserted deficiency and alleges as follows:

I. The Commissioner of Internal Revenue, the respondent herein, by letter dated June 9, 1931, and bearing the bureau reference or symbols IT:AR:A-8-JES notified your petitioner by registered mail, of a deficiency in income taxes with respect to the income tax imposed by the Revenue Act of 1926.

II. Your petitioner was at all times hereinafter mentioned, a corporation duly organized and existing under the laws of the State of Delaware and was engaged in the business of holding investments in and controlling the operations of public utilities and related trades or businesses.

III. Upon information and belief the notice of deficiency, a copy of which is attached hereto, made a part hereof as [fol. 4] though here set forth in full and marked Exhibit "A," was mailed to your petitioner on June 9, 1931.

IV. The taxes in controversy are income taxes for the fiscal period beginning January 1, 1927 and ending December 31, 1927, in the amount of $463,957.88.

V. The respondent's determination of income taxes set forth in said deficiency letter is based on the following errors:

A. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the taxable net incomes of your petitioner and its affiliated taxpayer, Binghamton Light, Heat & Power Company for the period January 1, 1927 to December 31, 1927.

B. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the accounts of your petitioner with the accounts of the taxpayers engaged in related trades or businesses, owned or controlled directly or indirectly by the same interests, as more fully appears from Exhibit "B" attached hereto and made a part hereof as though here set forth in full.

C. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding to or failing to deduct from the taxable net incomes of its affiliated taxpayers the following items:

[fol. 5]

Item	Name of Affiliated Taxpayer	Description of Item	
1	Reading Transit Company	Taxes	$13,446.75
2	Reading Transit Company	Rentals	4,204.63
3	Reading Transit Company	Depreciation	100,764.72
4	Reading Transit Company	Additions to leased property	11,766.95
5	Oley Valley Railway Company	Depreciation	8,713.01
6	Oley Valley Railway Company	Taxes	764.48
7	Hamburg Gas & Electric Company	Bad Debts	557.52
8	Hamburg Gas & Electric Company	Depreciation	9,414.83
9	Hamburg Gas & Electric Company	Taxes	2,137.00
10	Topton Electric Light & Pr. Co.	Bad Debts	50.71
11	Topton Electric Light & Pr. Co.	Taxes	527.78
12	Weisenberg Township Elec. Lt. & Power Company	Bad Debts	112.66
13	Weisenberg Township Elec. Lt. & Power Company	Taxes	71.84
14	Ortanna Electric Lt. & Pr. Company	Bad Debts	152.28
15	Ortanna Electric Lt. & Pr. Company	Depreciation	3,220.42

Item	Name of Affiliated Taxpayer	Description of Item	
16	Birdsboro Electric Company	Bad Debts	147.00
17	Birdsboro Electric Company	Taxes	748.24
18	French Creek Electric Company	Bad Debts	24.00
19	French Creek Electric Company	Depreciation	3[illegible].54
20	Bernville Light, Heat & Power Co.	Bad Debts	11.75
21	Bernville Light, Heat & Power Co.	Taxes	103.98
22	Bernville Light, Heat & Power Co.	Depreciation	1,373.17
23	Berks-Lehigh Electric Company	Bad Debts	86.83
24	Berks-Lehigh Electric Company	Taxes	359.84
25	Berks-Lehigh Electric Company	Depreciation	1,801.43
26	Blue Mountain Electric Company	Bad Debts	102.95
27	Blue Mountain Electric Company	Taxes	3,165.70
28	Blue Mountain Electric Company	Depreciation	8,975.20
29	Niantic Electric Company	Taxes	44.45
30	Niantic Electric Company	Depreciation	743.50
31	New Jersey Power & Light Co.	Bad Debts	4,500.00
32	New Jersey Power & Light Co.	Injuries and Damages	339.22

[fol. 6]

Item	Name of Affiliated Taxpayer	Description of Item	
33	New Jersey Power & Light Co.	Taxes	27,683.53
34	New Jersey Power & Light Co.	Depreciation	309,937.26
35	New Jersey Power & Light Co.	Amortization	307,321.71
36	Northern Pennsylvania Power Company	Loss on sale of Capital Assets	9,597.96
37	Northern Pennsylvania Power Company	Taxes	17,839.69
38	Northern Pennsylvania Power Company	Depreciation	85,628.19
39	Northern Pennsylvania Power Company	Amortization	32,634.71
40	Broad River Power Company	Bad Debts	122,123.47
41	Broad River Power Company	Cost of Changing Equipment	72,019.77
42	Broad River Power Company	Adjustment to Income by the respondent	30,414.19
43	Broad River Power Company	Taxes	18,968.90
44	Broad River Power Company	Amortization	11,436.96
45	Broad River Power Company	Discount on bonds	20,550.00
46	Broad River Power Company	Amortization	12,360.58
47	Broad River Power Company	Depreciation	459,752.83
48	Columbia Railway Gas & Elec. Co.	Obsolescence	274,117.51
49	Columbia Railway Gas & Elec. Co.	Loss on sale of Capital Assets	1,236.78
50	North Carolina Public Service Co.	Discount on bonds	65.24
51	North Carolina Public Service Co.	Loss on securities	1,002.00
52	North Carolina Public Service Co.	Depreciation	277,196.86
53	North Carolina Public Service Co.	Loss on sale of Capital Assets	21,868.10
54	North Carolina Public Service Co.	Amortization	4,451.09
55	Binghamton Light, Heat & Pr. Co.	Taxes	20,369.75
56	Binghamton Light, Heat & Pr. Co.	Depreciation	213,166.03
57	Florida Public Service Company	Net Loss	58,952.90
58	Lexington Water Power Company	Net Loss	57,061.50
59	South Carolina Gas & Electric Company	Net Loss 1925	441,354.31
60	South Carolina Gas & Electric Company	Net Loss 1926	423,898.48
61	South Carolina Gas & Electric Company	Net Loss 1927	331,176.19

[fol. 7] D. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding to or failing to deduct therefrom as follows:

1. Profit on sale of securities of affiliated companies	$572,486.68
2. Taxes	5,566.00
3. Profit on sale of subsidiary companies' bonds	16,116.67

E. That the respondent erroneously and illegally determined, computed, allocated, charged, and/or credited the taxes paid by or determined against and/or assessed against your petitioner and/or its affiliated taxpayers and/or taxpayers engaged in related trades or businesses.

VI. Facts upon which your petitioner relies as sustaining the aforesaid assignments of error are as follows:

A. That your petitioner was affiliated with the Binghamton Light, Heat & Power Company for the period beginning January 1, 1927, and ending December 31, 1927.

1. Your petitioner and/or its affiliated taxpayers owned at least 95% of the stock, within the meaning and contemplation of the law, of the Binghamton Light, Heat & Power Company for the period beginning January 1, 1927, and ending December 31, 1927.

2. That your petitioner and the Binghamton Light, Heat & Power Company filed a consolidated income tax return [fol. 8] for the calendar year 1927.

B. That your petitioner and the taxpayers, enumerated in Exhibit "B" attached hereto and made a part hereof as though here set forth in full, were owned or controlled, directly or indirectly by the same interests.

1. That your petitioner and the taxpayers enumerated in Exhibit "B" were at all times herein mentioned engaged in a related trade or business i. e., ownership and operation of public utilities.

2. That your petitioner and the Binghamton Light, Heat & Power Company filed a consolidated return for the calendar year 1927.

3. That the accounts of your petitioner and of said taxpayers enumerated in Exhibit "B" are so related that it is necessary in order to make an accurate distribution or opportionment of gains, profits, income, deductions or

capital between or among them, to consolidate their accounts.

C. Affiliated taxpayers—Facts as to erroneous and illegal increases in taxable net income of affiliated taxpayers by the respondent:

1. Reading Transit Company—said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $69,418.46 of which only $55,971.71 was allowed by [fol. 9] the respondent as a deduction in determining taxable net income.

2. Reading Transit Company—That the respondent erroneously and illegally increased taxable net income by failing to allow rent in the amount of $4,204.63 paid by the said affiliated company during the calendar year 1927.

3. Reading Transit Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $100,764.72 as a fair and reasonable additional allowance for depreciation.

4. Reading Transit Company—That during the calendar year 1927 said affiliated taxpayer made additions and betterments to leased properties amounting to $11,766.95 which the respondent failed to allow as a deduction in determining taxable net income.

5. Oley Valley Railway Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $8,713.01 as a fair and reasonable additional allowance for depreciation.

6. Oley Valley Railway Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes [fol. 10] properly deductible in determining taxable net income amounting to $1,673.98 of which only $909.50 was allowed by the respondent as a deduction in determining taxable net income.

7. Hamburg Gas & Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $557.52 by placing its deductions for bad debts upon an actual bad debt basis.

Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

8. Hamburg Gas & Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $9,444.83 as a fair and reasonable additional allowance for depreciation.

9. Hamburg Gas & Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $2,931.22 of which only $794.22 was allowed by the respondent in determining taxable net income.

10. Topton Electric Light & Pr. Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $50.71 by placing its deductions for bad debts upon an actual bad debt [fol. 11] basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

11. Topton Electric Light & Pr. Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $850.40 of which only $322.62 was allowed by the respondent as a deduction in determining taxable net income.

12. Weisenberg Township Electric Light & Pr. Company —The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $112.66 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

13. Weisenberg Township Electric Light & Pr. Company —Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $98.16 of which only $26.32 was allowed by the respondent as a deduction in determining taxable net income.

14. Ortanna Electric Lt. & Pr. Company—The respondent erroneously and illegally increased taxable net income of [fol. 12] said affiliated taxpayer in the amount of $152.28

by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

15. Ortanna Electric Lt. & Pr. Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $3,220.42 as a fair and reasonable allowance for depreciation.

16. Birdsboro Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $147.00 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

17. Birdsboro Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $508.80 of which only $239.44 was allowed by the respondent as a deduction in determining taxable net income.

18. French Creek Electric Company—The respondent erroneously and illegally increased taxable net income of said [fol. 13] affiliated taxpayer in the amount of $24.00 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

19. French Creek Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $393.54 as a fair and reasonable allowance for depreciation.

20. Bernville Light, Heat & Pr. Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $11.75 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

21. Bernville Light, Heat & Pr. Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net in-

come amounting to $198.86 of which only $94.88 was allowed by the respondent as a deduction in determining taxable net income.

22. Bernville Light, Heat & Pr. Company—That the depreciable property of said taxpayer for the calendar year [fol. 14] 1927 was a sum certain, sufficient to constitute the amount of $1,373.17 as a fair and reasonable allowance for depreciation.

23. Berks-Lehigh Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $86.83 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

24. Berks-Lehigh Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $148.86 of which only $210.98 was allowed by the respondent as a deduction in determining taxable net income.

25. Berks-Lehigh Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $1,801.43 as a fair and reasonable allowance for depreciation.

26. Blue Mountain Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $102.95 by placing its deductions for bad debts upon an actual bad debt basis. [fol. 15] Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

27. Blue Mountain Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $1,079.80 of which only $2,085.90 was allowed by the respondent as a deduction in determining taxable net income.

28. Blue Mountain Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of

$8,975.20 as a fair and reasonable allowance for depreciation.

29. Niantic Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $55.82 of which only $11.37 was allowed by the respondent as a deduction in determining taxable net income.

30. Niantic Electric Company — That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $743.50 as a fair and reasonable allowance for depreciation.

31. New Jersey Power & Light Company—During the [fol. 16] calendar year 1927 said affiliated taxpayer charged operating expenses and credited reserve for uncollectible accounts in the amount of $8,700 of which $4,500 was disallowed by the respondent. A fair and reasonable allowance for bad debts would not be less than $8,700.

32. New Jersey Power & Light Company—During the calendar year 1927 said affiliated taxpayer added to its reserve for Injuries and Damages in the form of miscellaneous credits $339.22. Upon information and belief this amount was not used as a deduction in determining taxable net income on the return as filed.

33. New Jersey Power & Light Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $128,223.11 of which only $100,539.58 was allowed by the respondent as a deduction in determining taxable net income.

34. New Jersey Power & Light Company—That the depreciable property of said affiliated taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $309,937.26 as a fair and reasonable additional allowance for depreciation.

35. New Jersey Power & Light Company—That said affiliated taxpayer incurred during the calendar year 1927 in- [fol. 17] terest expense and/or ordinary and necessary expense by reason of amortization and/or premiums amounting to $307,321.71 which the respondent erroneously and illegally failed to allow.

36. Northern Pennsylvania Power Company—That the respondent erroneously and illegally increased taxable net income by disallowing $9,597.96 of a total loss of $37,506.40 incurred during the calendar year 1927 on the sale of miscellaneous capital assets.

37. Northern Pennsylvania Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $10,052.41 of which only $7,787.28 was allowed by the respondent as a deduction in determining taxable net income.

38. Northern Pennsylvania Power Company—That the depreciable property of said affiliated taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $85,628.19 as a fair and reasonable additional allowance for depreciation.

39. Northern Pennsylvania Power Company—That said affiliated taxpayer incurred during the calendar year 1927 interest expense and/or ordinary and necessary expense by [fol. 18] reason of amortization and/or premiums amounting to $32,634.71 which the respondent failed to allow.

40. Broad River Power Company—during the calendar year 1927 said affiliated taxpayer incurred a loss through the write-off of bad debts in the amount of $122,123.47 which the respondent failed to allow as a deduction in determining taxable net income.

41. Broad River Power Company—That during the calendar year 1927 said affiliated taxpayer incurred an expense of $72,019.77 properly deductible in determining taxable net income by reason of changing certain of its equipment from 40 to 60 cycle which the respondent failed to allow as a deduction in determining taxable net income.

42. Broad River Power Company—That in adjusting taxable net income the respondent erroneously and illegally duplicated an addition thereto in the amount $30,414.19 representing obsolescence which was also included in his adjustment for loss on sale of capital assets.

43. Broad River Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net in-

come amounting to $244,105.44 of which only $225,136.54 was allowed by the respondent as a deduction in determining taxable net income.

[fol. 19] 44. Broad River Power Company—Said taxpayer incurred during the calendar year 1927 interest expense and/or ordinary and necessary expense by reason of amortization amounting to $11,436.96 which the respondent erroneously and illegally failed to allow.

45. Broad River Power Company—That said affiliated taxpayer did not realize any taxable profit in the purchase of its own bonds at a discount of $20,550.

46. Broad River Power Company—That said affiliated taxpayer incurred during the calendar year 1927 interest expense and/or ordinary and necessary expense by reason of amortization amounting to $12,036.58, which the respondent erroneously and illegally failed to allow.

47. Broad River Power Company—That the depreciable property of said affiliated taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $459,752.83 as a fair and reasonable additional allowance for depreciation.

48. Columbia Railway, Gas & Elec. Company—That said affiliated taxpayer, by reason of abandonments of its street car lines and equipment, sustained or incurred obsolescence during 1927 amounting to not less than $274,117.51.

49. Columbia Railway, Gas & Electric Company—That during the calendar year 1927 said affiliated taxpayer sold miscellaneous capital assets and sustained a loss of [fol. 20] $1,236.78 on said sale which the respondent failed to allow as a deduction in determining taxable net income.

50. North Carolina Public Service Company—That said affiliated taxpayer did not realize taxable profit in the purchase of its own bonds at a discount of $65.24.

51. North Carolina Public Service Company—That during the calendar year 1927 said affiliated taxpayer determined that its investment of $1,002 in the stock of South Atlantic Export Company was worthless and wrote down the investment to the nominal amount of 2 dollars.

52. North Carolina Public Service Company—That the depreciable property of said taxpayer for the period begin-

ning January 1, and ending August 1, 1927, was a sum certain sufficient to constitute the amount of $277,196.86 as a fair and reasonable allowance for depreciation.

53. North Carolina Public Service Company—That during the period beginning January 1, 1927, and ending August 1, 1927, said affiliated company sold miscellaneous capital assets and incurred a loss of $21,868.10 on said sale which the respondent failed to allow as a deduction in determining taxable net income.

54. North Carolina Public Service Company—Said affiliated taxpayer incurred during the period beginning January 1, and ending August 1, 1927, interest and/or ordinary and necessary expenses in the nature of amortization [fol. 21] amounting to $4,451.09 which the respondent failed to allow as a deduction in determining taxable net income.

55. Binghamton Light, Heat & Pr. Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $99,354.45 of which only $78,984.70 was allowed by the respondent as a deduction in determining taxable net income.

56. Binghamton Light, Heat & Pr. Company—That the depreciable property of said affiliated taxpayer for the calerdar year 1927 was a sum certain, sufficient to constitute the amount of $213,166.03 as a fair and reasonable additional allowance for depreciation.

57. Florida Public Service Company—That said taxpayer sustained a net loss of $58,952.90 during the calendar year 1927 which the respondent failed to allow in computing consolidated taxable net income for 1927.

58. Lexington Water Power Company—That said taxpayer sustained a net loss of $57,061.50 during the calendar year 1927 which the respondent failed to allow in computing the consolidated taxable net income for 1927.

59. South Carolina Gas & Elec. Company—That said taxpayer sustained a net loss of $441,354.31 during the calendar [fol. 22] year 1925 which the respondent failed to allow in computing the consolidated taxable net income for 1927.

60. South Carolina Gas & Elec. Company—That said taxpayer sustained a net loss of $423,889.48 during the calendar

year 1926 which the respondent failed to allow in computing the consolidated taxable net income for 1927.

61. South Carolina Gas & Elec. Company—That said taxpayer sustained a net loss of $331,176.19 during the period beginning January 1, 1927, and ending July 31, 1927, which the respondent failed to allow in computing consolidated taxable net income for the calendar year 1927.

D. Petitioner's income—Facts as to erroneous and illegal increases in taxable net income of your petitioner by respondent:

1. That the respondent erroneously and illegally increased taxable net income by including therein alleged taxable profit, on the sale of an affiliated taxpayer's stock in the amount of $572,486.68.

2. That your petitioner paid and incurred during the calendar year 1927 taxes property deductible in determining taxable net income amounting to $8,869.67 of which only $3,303.67 was allowed by the respondent as a deduction in determining taxable net income.

3. That the respondent erroneously and illegally increased taxable net income by including therein profit on [fol. 23] sale of bonds of an affiliated taxpayer amounting to $16,116.67.

E. That the respondent has erroneously and illegally determined, computed, allocated and assessed the income taxes between your petitioner, its affiliated taxpayers and/or the taxpayers engaged in related trades or businesses, contrary to the agreement between said taxpayers, the law and regulations made and provided.

Wherefore, your petitioner prays that your Honorable Board may hear and determine its petition; that the determination of the respondent contained in said deficiency letter be redetermined, set aside, disallowed and disapproved by your Honorable Board, granting unto your petitioner a reduction and disallowance of said respondent's deficiency and refunding or crediting the income tax overpayments and overassessments as follows:

Fiscal period beginning January 1, 1927, and ending December 31, 1927	Overassessment and Overpayment	$153,155.54

to your petitioner, its affiliated taxpayers and/or its taxpayers engaged in said related trades or businesses, in accordance with the agreement between said taxpayers and the law.

All of which is respectfully submitted.

Francis J. Sweeney, Counsel for Taxpayer, Room 2406—61 Broadway, New York, N. Y.

[fol. 24] *Duly sworn to by J. F. McKenna. Jurat omitted in printing.*

[fol. 25] General Gas & Electric Corporation

Certified Resolutions

Whereas, The United States Treasury Department, by letter dated June 9, 1931, notified this company of an asserted deficiency of $277,903.82 for the period January 1, 1927 to December 31, 1927 in connection with its Federal Income Tax Return; and

Whereas, this company is informed and believes that said deficiency is erroneous and illegal. Now, Therefore, Be It

Resolved, that J. F. McKenna, Vice President, is directed and authorized to cause to be prepared a petition to the United States Board of Tax Appeals for a redetermination and also to execute the verification of said petition and to retain Francis J. Sweeney as counsel.

This is to Certify that the undersigned is Assistant Secretary of General Gas & Electric Corporation, a corporation of the State of Delaware, that the above and foregoing is a true and correct copy of certain resolutions duly and regularly adopted by the Executive Committee of said corporation at a meeting thereof duly convened and held on the 21st day of July, 1931, at which meeting a quorum was present and that said resolutions have not been annulled, revoked or amended in any way whatsoever but are in full force and effect.

[fol. 26] Witness the signature of the undersigned as such officer of the corporation and its corporate seal hereunto affixed this 21st day of July, 1931.

(Signed) C. A. Daugherty, Asst. Secy.

Subscribed and sworn to before me this 22nd day of July, 1931. (Signed) A. P. Ringressy, Notary Public. Kings County Clk's No. 396, Reg. No. 2030. N. Y. County Clk's No. 79, Reg. No. 3R-72. Commission Expires March 30, 1933. (Seal.)

EXHIBIT "A" TO PETITION

NP-2-26.

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address Reply to Commissioner of Internal Revenue and refer to

Jun. 9, 1931.

General Gas and Electric Corporation, Room 2406 - 61
Broadway, New York, New York.

SIRS:

You are advised that the determination of your tax liability for the year(s) 1927 discloses a deficiency of $277,- [fol. 27] 903.82 as shown in the statement attached.

In accordance with Section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier; Whereas if this form is not filed. interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by J. C. Wilmer, Deputy Commissioner.

Enclosures: Statement. Form 882. Form 870. Schedules 1 to 64, inclusive.

[fol. 28]

IT:AR:A-8.
JES.

Statement

Companies included in the consolidation:

Parent (or Principal Company)	Returns Examined for the Year
General Gas and Electric Corporation, Room 2406, 61 Broadway, New York, New York	1927
Subsidiary Companies	
The General Finance Corporation, Room 2406, 61 Broadway, New York, New York	1927
Reading Transit Company, 412 Washington Street, Reading, Pennsylvania	1927
Oley Valley Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Oley Valley Quarry Company, 412 Washington Street, Reading, Pennsylvania	1927
Reading Transit Bus Company, 412 Washington Street, Reading, Pennsylvania	1927
Neversink Mountain Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Reading and Hamburg Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Womelsdorf and Myerstown Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Hamburg Gas and Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Topton Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
[fol. 29]	
Weisenberg Township Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
Ortanna Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
Birdsboro Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
The French Creek Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Bernville Light Heat and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
Berks-Lehigh Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Blue Mountain Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Niantic Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	Period July 1, 1927 to October 1, 1927

General Gas and Electric Corporation—Statement—Continued

Parent (or Principal Company)	Returns Examined for the Year
The Jersey Corporation, 30 West Blackwell Street, Dover, New Jersey	1927
New Jersey Power and Light Company, 30 West Blackwell Street, Dover, New Jersey	1927
Northern Pennsylvania Power Company, 207 Main Street, Blossburg, Pennsylvania	1927
The Waverly Electric Light and Power Company, 172 Washington Street, Binghamton, New York	1927
The Nicholson Light, Heat and Power Company, 172 Washington Street, Binghamton, New York	Period January 1, 1927 to November 1, 1927
[fol. 30]	
Broad River Power Company, Arcade Building, Columbia, South Carolina	1927
Columbia Railway Gas and Electric Company, Arcade Building, Columbia, South Carolina	1927
Columbia Gas Light Company, Arcade Building, Columbia, South Carolina	1927
North Carolina Public Service Company, 118 North Elm Street, Greensboro, North Carolina	Period January 1, 1927 to August 1, 1927
Salisbury and Spencer Railway Company, 118 North Elm Street, Greensboro, North Carolina	Period January 1, 1927 to August 1, 1927
Greensboro Bus Company, 118 North Elm Street, Greensboro, North Carolina	Period January 1, 1927 to August 1, 1927
Melrose Power and Manufacturing Company, Arcade Building, Columbia, South Carolina	Period January 1, 1927 to February 22, 1927
Blue Ridge Power Company, Arcade Building, Columbia, South Carolina	1927
Manufacturers Power Company, Arcade Building, Columbia, South Carolina	1927
Saluda Manufacturing Company, Arcade Building, Columbia, South Carolina	1927
Central Carolina Power Company, Arcade Building, Columbia, South Carolina	1927
Richland Public Service Company of South Carolina, Arcade Building, Columbia, South Carolina	1927

[fol. 31]

General Gas and Electric Corporation—Statement—Continued

Parent (or Principal Company)	Returns Examined for the Year
Public Service Company of South Carolina, Arcade Building, Columbia, South Carolina	Period January 1, 1927 to July 11, 1927
Saylorsburg Light and Power Company, 160 Ferry Street, Easton, Pennsylvania	Period January 1, 1927 to July 31, 1927
Pen Argyl Gas Company, 2nd and Ferry Streets, Easton, Pennsylvania	Period January 1, 1927 to July 31, 1927
New Jersey Power Corporation, 2nd and Ferry Streets, Easton, Pennsylvania	Period January 1, 1927 to July 5, 1927

[fol. 32] Inasmuch as the provisions of section 240(c) and (4) of the Revenue Act of 1926 have not been complied with the Binghamton Light, Heat and Power Company has been ruled not affiliated with your company for the year 1927.

Tax Liability

General Gas and Electric Corporation

Year	Tax Liability	Tax Assessed	Deficiency
1927	$400,318.90	$122,415.08	$277,903.82

Full details of the adjustments producing the above-stated result are contained in the attached schedules 1 to 64, inclusive, and the revenue agent's report.

The entire tax liability has been allocated to the General Gas and Electric Corporation in accordance with the allocation of tax agreement, signed by each company included in the affiliated group, which is on file in this office.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1927 the Bureau will be unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926. It is, therefore, necessary at this time to issue this formal notice of deficiency.

In the determination of your tax liability, stated above, careful consideration has been given the statements set forth in your protest to the revenue agent's report and the claim, listed below, filed by you and your affiliated companies, which will be made the subject of separate communications from this Bureau:

[fol. 33] General Gas and Electric Corporation

Statement

Name of Company Filing Claim	Kind of Claim	Year or Period	Amount
General Gas and Electric Corporation and affiliated companies	Refund	1927	$140,625.44
General Gas and Electric Corporation	Refund	1927	50,996.04
New Jersey Power and Light Company	Refund	1927	3,032.48
Northern Pennsylvania Power Company	Refund	1927	5,582.27
Ortanna Electric Light and Power Company	Refund	1927	183.79
Topton Electric Light and Power Company	Refund	1927	1,068.06
Weisenberg Township Electric Light and Power Company	Refund	1927	84.37
The French Creek Electric Company	Refund	1927	193.12
Hamburg Gas and Electric Company	Refund	1927	6,148.68
Birdsboro Electric Company	Refund	1927	1,376.74
Bernville Light Heat and Power Company	Refund	1927	475.68
Berks-Lehigh Electric Company	Refund	1927	345.02
Blue Mountain Electric Company	Refund	1927	2,615.63
The Nicholson Light, Heat and Power Company	Refund	January 1 to October 31, 1927	168.47
Saylorsburg Light and Power Company	Refund	January 1 to July 31, 1927	192.83
Niantic Electric Light and Power Company	Refund	July 1 to October 1, 1927	42.19
Broad River Power Company	Refund	1927	1,608.13
Reading Transit Company	Refund	1927	20,371.75
Oley Valley Railway Company	Refund	1927	291.00

A carbon copy of this letter has been mailed to H. C. Hopson and Company, 61 Broadway, New York, New York, in accordance with the authorization contained in a power of attorney, running to them, which is on file in this office.

[fol. 34] General Gas and Electric Corporation

Year Ended December 31, 1927

Schedule 1

Net Income

Net income as disclosed by return	$579,139.03
As corrected	1,136,784.77
Net adjustment	$557,645.74

Unallowable deduction and additional income:		
(a) Profit on sale of securities	$572,486.68	
(b) Interest received on income tax refund	941.24	
Total		$573,427.92
Nontaxable income and additional deductions:		
(c) Legal expenses	$15,782.18	
Total		15,782.18
Net adjustment as above		$557,645.74

Schedule 1-a

Explanation of Items Changed

(a) This item represents profit realized from the sale of 30020 shares common stock of North Carolina Public Service Company to Duke Power Company and the amount, which was included in your income tax return as nontaxable income, is added to taxable income in accordance with the [fol. 35] provisions of section 233 of the Revenue Act of 1926 and article 541, Regulations 69, the amount is computed as follows:

Amount received from sale	$1,104,736.68
Cost	532,250.00
Profit realized	$572,486.68

(b) This item represents interest received during the taxable year on an overpayment of federal income taxes for prior years, and the amount is added to taxable income in accordance with the provisions of section 233 of the Revenue Act of 1926 and article 541, Regulations 69.

Reference: I.T.2210, Cumulative Bulletin IV-2, page 96

General Gas and Electric Corporation

Year Ended December 31, 1927

Schedule 1-a (Continued)

Explanation of Items Changed (Continued)

(c) This item represents legal expenses incurred in connection with the sale of the stock referred to in item (a), above, which was shown as an unallowable deduction in schedule L of your income tax return for the taxable year, and the amount is allowed as a deduction from gross income in accordance with the provisions of section 234 of the Revenue Act of 1926 and article 561, Regulations 69.

[fol. 36]

Schedule 2

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$501,914.23
Correct net income		1,136,784.77
Footing		$1,638,699.00
Nontaxable income and additional deductions:		
Refund of federal income tax	$5.00	
Profit on sale of stock—Metropolitan Edison Company	6,400.00	
Dividends from stock of Domestic Corporations	1,642,861.17	
		1,649,266.17
Total		$3,287,965.17
Unallowable deductions and additional income:		
Federal income taxes	$59,500.00	
Normal 2% income tax on tax free covenant bond interest	11.01	
Capital stock tax of General Gas and Electric Corporation (Maine) for 1924	5,566.00	
Refund of installment payment of Rutland Railway Light and Power Company preferred stock	119.90	
Interest received on federal income tax refunded	941.24	
Dividends paid	1,888,951.03	
		1,955,089.18
Profit and loss surplus disclosed by balance sheet at end of year		$1,332,875.99

[fol. 37] General Gas and Electric Corporation

The General Finance Corporation

Year Ended December 31, 1927

Schedule 3

Net Income

Net income as disclosed by return	($45,281.87)
As corrected	(38,881.87)
Adjustment	$6,400.00

Unallowable deductions and additional income:

(a) Additional profit on sale of 1,800 shares Metropolitan Edison Company $6.00 preferred stock	$6,400.00

Schedule 3-a

Explanation of Items Changed

(a) This item represents additional profit realized in connection with the sale of stock of the Metropolitan Edison Company, resulting from the use of $153,600.00 as the cost of this stock to you whereas the cost of $147,200.00 to the parent company, General Gas and Electric Corporation, from whom the stock was purchased, should have been used. The amount is, therefore, added to taxable income in accordance with the provisions of section 233 of the Revenue Act of 1926 and article 541, Regulations 69.

[fol. 38]

Schedule 4

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$70,654.51
Corrected net income	(38,881.87)
Footing	$31,772.64

Nontaxable income and additional deductions:

Dividends received from stock of Domestic Corporations	451.00
Total	$32,223.64

Unallowable deductions and additional income:

Profit on sale of 1,800 shares stock of Metropolitan Edison Company	6,400.00
Profit and loss surplus disclosed by balance sheet at end of year	$25,823.64

[fol. 39] General Gas and Electric Corporation

Reading Transit Company

Year Ended December 31, 1927

Schedule 5

Net Income

Net income as disclosed by return	$221,118.78
As corrected	280,838.21
Net adjustment	$59,719.43

Unallowable deductions and additional income:

(a) Amortization of additions and improvements to leased property	$14,066.02	
(b) Excessive loss on sale of property	6,006.79	
(c) Increase in tax liability reserve	12,104.33	
(d) Depreciation overaccrued	27,542.29	
Total adjustment as above		$59,719.43

[fol. 40]

Schedule 5-a

Explanation of Items Changed

(a) In the absence of the required information with respect to the terms of the leases under which the expenditures are made the above amount is disallowed as a deduction from gross income in accordance with provisions of sections 214(a) (1) and 234(a) (1) of the Revenue Act of 1926 and articles 110 and 561, Regulations 69.

(b) This item represents an excessive loss in connection with the sale of miscellaneous property, during the taxable year, taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 234 of the Revenue Act of 1926 and article 561, Regulations 69, the amount is computed as follows:

Kind of Property	Year Acquired	Cost or March 1, 1913 Value	Depreciation Autos 20% Other 3⅓%	Sale Price	Profit or Loss
Dodge auto..	1922	$1,037.38	$1,037.38	$125.00	$125.00
Miscellaneous cars.......	March 1, 1913	10,801.26	4,980.55	1,080.27	(4,740.44)
Miscellaneous cars.......	March 1, 1913	2,125.12	979.92	377.74	(767.46)
Land........	1903	1,270.42	-0-	1,000.00	(270.42)
Lines and equipment.	March 1, 1913	516.03	237.95	210.49	(67.59)
Lines and equipment	1918	746.98	236.54	170.13	(340.31)
Total...............		$16,497.19	$7,472.34	$2,963.63	($6,061.22)

[fol. 41] General Gas and Electric Corporation

Reading Transit Company

Year Ended December 31, 1927

Schedule 5-a (Continued)

Explanation of Items Changed (Continued)

(b) Continued) Brought forward	($6,061.22)
Amount deducted in return	12,068.01
Amount disallowed as above	$6,006.79

(c) Inasmuch as the taxes paid by the corporation have been taken and allowed as deductions from gross income in prior years on the paid basis rather than on the accrual basis, this adjustment is found necessary.

(d) This item represents depreciation deducted from gross income in your income tax return for the taxable year in excess of the amount allowable as determined by the Bureau in accordance with the provisions of section

234(a) (7) of the Revenue Act of 1926, and article 164, Regulations 69. The amount is computed as follows:

Plant account at January 1, 1927		$6,848,198.14
Less:		
Additions and improvements to leased property	$1,802,242.91	
Leaseholds, contracts and rights	2,315,864.04	
General	21,544.21	
		4,139,651.16
Adjusted depreciable assets January 1, 1927		$2,708,546.98

[fol. 42] Plant account at December 31, 1927		$6,842,242.68
Less:		
Additions and improvements to leased property	$1,802,242.91	
Leaseholds, contracts and rights	2,315,864.04	
General	21,544.21	
		4,139,651.16
Adjusted depreciable assets at December 31, 1927		$2,702,591.52

Average depreciable assets for the year: ($2,708,546.98 plus $2,702,591.52) 2	$2,705,569.25

General Gas and Electric Corporation
Reading Transit Company
Year Ended December 31, 1927
Schedule 5-a (Continued)
Explanation of Items Changed (Continued)

(d) (Continued)

Depreciation rate	1½%
Depreciation deducted in return	$68,125.83
Depreciation sustained: ($2,705,569.25 times 1½%)	40,583.54
Amount disallowed as above	$27,542.29

[fol. 43]

Schedule 6

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of taxable year		$353,509.44
Corrected net income		280,838.21
Footing		$634,347.65
Nontaxable income and additional deductions:		
Dividends received from stock of domestic corporations	$9,823.00	
Charges to reserve for injuries and damages	69,065.54	
1927 charges applicable to 1928	11,565.76	
Loss on sale of property	6,061.22	
		96,515.52
Total		$730,863.17
Unallowable deductions and additional income:		
Depreciation overaccrued	$27,542.29	
Federal income taxes	43,593.36	
Credit to reserve for injuries and damages	88,606.00	
1927 charges applicable to 1926	2,834.16	
Dividends paid	119,145.00	
Increase in tax liability reserve	12,104.33	
		293,825.14
Profit and loss surplus disclosed by balance sheet at end of year		$437,038.03

[fol. 44] General Gas and Electric Corporation

Oley Valley Railway Company

Year Ended December 31, 1927

Schedule 7

Net Income

Net income as disclosed by return	$2,960.96
As corrected	(2,463.83)
Net adjustment	$5,424.79

Unallowable deductions and additional income:

(a) Increase in tax liability reserve	$1,540.72

Nontaxable income and additional deductions:

(b) Depreciation underaccrued	6,965.51
Net adjustment as above	$5,424.79

(a) For explanation of this adjustment see item (c) schedule 5-a, above.

(b) This item represents depreciation, sustained during the taxable year, allowable as a deduction from gross income as determined by the Bureau in accordance with the provisions of section 234(a) (7) of the Revenue Act of 1926, and article 164, Regulations 69. The amount is computed as follows:

[fol. 45] Average depreciable assets for the year	$464,367.55
Depreciation rate	1½%
Depreciation sustained ($464,367.55 times 1½%)	$6,965.51
Amount deducted in return	None.
Amount allowed as above	$6,965.51

Schedule 8

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$9,217.41
Corrected net income	(2,463.83)
Footing	$6,753.58

[fol. 46] **General Gas and Electric Corporation**

Oley Valley Railway Company

Year Ended December 31, 1927

Schedule 8 (Continued)

Reconciliation of Surplus

Brought forward		$6,753.58
Nontaxable income and additional deductions:		
Charges to reserve for injuries and damages	$108.25	
Depreciation underaccrued	6,965.51	
		7,073.76
Total		$13,827.34
Unallowable deductions and additional income:		
Federal income taxes	$1,372.04	
Increase in tax liability reserve	1,540.72	
		2,912.76
Profit and loss surplus disclosed by balance sheet at end of year		$10,914.58

Schedule 9

Oley Valley Quarry Company

Net Income

Net income as disclosed by return	($143.52)
As corrected	No change.

[fol. 47] **Schedule 10**

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$3,833.51
Income as disclosed by return	(143.52)
Footing	$3,689.99

Schedule 10—Reconciliation of Surplus—Continued

Nontaxable income and additional deductions	None.	
Unallowable deductions and additional income	None.	
		0
Profit and loss surplus disclosed by balance sheet at end of year		$3,689.99

[fol. 48] General Gas and Electric Corporation

Reading Transit Bus Company

Year Ended December 31, 1927

Schedule 11

Net Income

Net income as disclosed by return	(549.38)
As corrected	(1,999.40)
Net adjustment	$1,450.02

Unallowable deductions and additional income:	
(a) Increase in tax liability reserve	$76.71
Nontaxable income and additional deductions:	
(b) Depreciation underaccrued	1,526.73
Net adjustment as above	$1,450.02

Schedule 11-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

(b) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

[fol. 49] Depreciable assets at January 1, 1927	None.
Depreciable assets at December 31, 1927	$41,794.10

Average depreciable assets for the year:

($41,794.10 divided by 2)	$20,897.05
Depreciation rate (busses)	20%
Depreciation deducted in return	$2,652.68

Depreciation sustained:

($20,897.05 times 20%)	4,179.41
Amount allowed as above	$1,526.73

General Gas and Electric Corporation

Reading Transit Bus Company

Year Ended December 31, 1927

Schedule 12

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$5,638.31
Corrected net income		(1,999.40)
Footing		$3,638.91
Nontaxable income and additional deductions:		
Charges to reserve for injuries and damages	$2.00	
Depreciation underaccrued	1,526.73	
		1,528.73
Total		$5,167.64
Unallowable deductions and additional income:		
Refund of interest payment on stock	$100.00	
Increase in tax liability reserve	76.71	
		176.71
Profit and loss surplus disclosed by balance sheet at end of year		$4,990.93

[fol. 50]

Schedule 13

Neversink Mountain Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 14

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		($89,373.21)
Corrected net income		None.
Total		($89,373.21)
Nontaxable income and additional deductions	None.	
Unallowable deductions and additional income	None.	
		0
Profit and loss surplus disclosed by balance sheet at end of year		($89,373.21)

[fol. 51] General Gas and Electric Corporation

Reading and Hamburg Railway Company

Year Ended December 31, 1927

Schedule 15

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 16

Womelsdorf and Myerstown Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 17

Hamburg Gas and Electric Company

Net Income

Net income as disclosed by return		$68,698.80
As corrected		73,085.46
Adjustment		$4,386.66
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$557.52	
(b) Depreciation overaccrued	1,452.19	
(c) Increase in tax liability reserve	2,376.95	
Total		$4,386.66

[fol. 52]

Schedule 17-a

Explanation of Items Changed

(a) This item represents the net increase in the reserve for bad debts, which was charged to expenses and taken as a deduction from gross income in your income tax return for the taxable year, and since the provisions of sections 214 (a) (7) and 234 (a) (5) of the Revenue Act of 1926, and articles 151 and 155, Regulations 69, have not been complied with the above amount is disallowed.

General Gas and Electric Corporation

Hamburg Gas and Electric Company

Year Ended December 31, 1927

Schedule 17-a (Continued)

Explanation of Items Changed (Continued)

(b) For explanation of this adjustment see item (d) schedule 5-a, above. The amount is computed as follows:

Plant account January 1, 1927	$381,602.83
Plant account December 31, 1927	$578,618.48
Average for the year: $\frac{(\$381,602.83 \text{ plus } \$578,618.48)}{2}$	$480,110.65
Depreciation rate	2%
Depreciation deducted in return	$11,054.40
Depreciation sustained: ($480,110.65 times 2%)	9,602.21
Amount disallowed	$1,452.19

(c) For explanation of this adjustment, see item (c), schedule 5-a, above.

[fol. 53]

Schedule 18

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$122,008.15
Corrected net income	73,085.46
Footing	$195,093.61
Nontaxable income and additional deductions:	
Charges to reserve for bad debts	42.48
Total	$195,136.09

[fol. 54]

General Gas and Electric Corporation

Hamburg Gas and Electric Company

Year Ended December 31, 1927

Schedule 18 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:		
Brought forward		$195,136.09
Federal income taxes	$8,441.25	
Credit to reserve for bad debts	600.00	
Dividends paid	1,225.00	
Depreciation overaccrued	1,452.19	
Increase in tax liability reserve	2,376.95	
		14,095.39
Profit and loss surplus disclosed by balance sheet at end of year		$181,040.70

Schedule 19

Topton Electric Light and Power Company

Net Income

Net income as disclosed by return	$11,965.52
As corrected	12,250.22
Net adjustment	$284.70

Unallowable deductions and additional income:

(a) Bad debts adjusted to actual basis	$50.71	
(b) Increase in tax liability reserve	583.82	
Total		$634.53

Nontaxable income and additional deductions:

(c) Depreciation underaccrued	349.83
Net adjustment as above	$284.70

[fol. 55]

Schedule 19-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

General Gas and Electric Corporation

Topton Electric Light and Power Company

Year Ended December 31, 1927

Schedule 19-a (Continued)

Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

Plant account January 1, 1927	$111,885.48
Plant account December 31, 1927	$131,873.95
Average for the year: ($111,885.48 plus $131,873.95) / 2	$121,879.72
Depreciation rate	3½%
Depreciation sustained: ($121,879.72 times 3½%)	$4,265.79
Depreciation deducted in return	3,915.96
Amount allowed as above	$349.83

[fol. 56]

Schedule 20

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$27,944.80
Corrected net income		12,250.22
Footing		$40,195.02
Nontaxable income and additional deductions:		
Charges to reserve for bad debts	$249.29	
Depreciation underaccrued	349.83	
		599.12
Total		$40,794.14

[fol. 57] General Gas and Electric Corporation

Topton Electric Light and Power Company

Year Ended December 31, 1927

Schedule 20 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:		
Brought forward		$40,794.14
Federal income taxes	$1,700.00	
Addition to reserve for bad debts	300.00	
Dividends paid	376.25	
Increase in tax liability reserve	583.82	
		2,960.07
Profit and loss surplus disclosed by balance sheet at end of year		$37,834.07

Schedule 21

Weisenberg Township Electric Light and Power Company

Year Ended December 31, 1927

Net Income

Net income as disclosed by return	$967.05
As corrected	1,029.03
Net adjustment	$61.98

Unallowable deductions and additional income:

(a) Bad debts adjusted to actual basis	$112.66	
(b) Increase in tax liability reserve	78.72	
Total		$191.38

Nontaxable income and additional deductions:

(c) Depreciation underaccrued	129.40
Net adjustment as above	$61.98

[fol. 58] Schedule 21-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

General Gas and Electric Corporation

Weisenberg Township Electric Light and Power Company

Year Ended December 31, 1927

Schedule 21-a (Continued)

Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

Plant account January 1, 1927	$15,884.18
Plant account December 31, 1927	$22,355.91
Average for the year: $\frac{\$15{,}884.18 \text{ plus } \$22{,}355.91)}{2}$	$19,120.05
Depreciation rate	4%
Depreciation sustained:	
($19,120.05 times 4%)	$764.80
Amount deducted in return	635.40
Amount allowed as above	$129.40

[fol. 59]

Schedule 22

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$2,804.25
Corrected net income		1,029.03
Footing		$3,833.28
Nontaxable income and additional deductions:		
Charges to reserve for bed debts	$7.34	
Depreciation underaccrued	129.40	
		136.74
Total		$3,970.02

[fol. 60] General Gas and Electric Corporation

Weisenberg Township Electric Light and Power Company

Year Ended December 31, 1927

Schedule 22 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:		
Brought forward		$3,970.02
Federal income taxes	$82.50	
Addition to reserve for bad debts	120.00	
Increase in tax liability reserve	78.72	
		281.22
Profit and loss surplus disclosed by balance sheet at end of year		$3,688.80

Schedule 23

Ortanna Electric Light and Power Company

Net Income

Net income as disclosed by return	$1,774.61
As corrected	1,805.31
Net adjustment	$30.70

Unallowable deductions and additional income:	
(a) Bad debts adjusted to actual basis	$152.28
Nontaxable income and additional deductions:	
(b) Decrease in tax liability reserve	121.58
Net adjustment as above	$30.70

[fol. 61]

Schedule 23-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment, see item (c), schedule 5-a, above.

General Gas and Electric Corporation

Ortanna Electric Light and Power Company

Year Ended December 31, 1927

Schedule 24

Reconciliation of Surplus

Profit and loss surplus as disclosed by balance sheet at beginning of year		$5,295.49
Corrected net income		1,805.31
Footing		$7,100.80
Nontaxable income and additional deductions:		
Charges to reserve for bad debts	$27.72	
Decrease in tax liability reserve	121.58	
		149.30
Total		$7,250.10
Unallowable deductions and additional income:		
Federal income taxes	$300.00	
Addition to reserve for bad debts	180.00	
		480.00
Profit and loss surplus disclosed by balance sheet at end of year		$6,770.10

[fol. 62]

Schedule 25

Birdsboro Electric Company

Net Income

Net income as disclosed by return		$15,584.34
As corrected		16,163.57
Net adjustment		$579.23
Unallowable deductions and additional income:		
(a) Increase in reserve for bad debts	$147.00	
(b) Increase in tax liability reserve	805.56	
Total		$952.56
Nontaxable income and additional deductions:		
(c) Depreciation underaccrued		373.33
Net adjustment as above		$579.23

General Gas and Electric Corporation

Birdsboro Electric Company

Year Ended December 31, 1927

Schedule 25-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 63] (c) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

Plant account January 1, 1927	$50,668.62
Plant account December 31, 1927	$87,998.05
Average for the year:	

$\dfrac{(\$50{,}668.62 \text{ plus } \$87{,}998.05)}{2}$	$69,333.34
Depreciation rate	4%
Depreciation sustained:	
($69,333.34 times 4%)	$2,773.33
Amount deducted in return	2,400.00
Amount allowed as above	$373.33

Schedule 26

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$46,607.43
Corrected net income	16,163.57
Footing	$62,771.00
Nontaxable income and additional deductions:	
Depreciation underaccrued	373.33
Total	$63,144.33

[fol. 64] General Gas and Electric Corporation

Birdsboro Electric Company

Year Ended December 31, 1937

Schedule 26 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:

Brought forward		$63,144.33
Federal income taxes	$2,400.00	
Addition to reserve for bad debts	147.00	
Increase in tax liability reserve	805.56	
		3,352.56
Profit and loss surplus disclosed by balance sheet at end of year		$59,791.77

Schedule 27

The French Creek Electric Company

Net Income

Net income as disclosed by return		$2,109.32
As corrected		2,166.76
Adjustment		$57.44
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$24.00	
(b) Increase in tax liability reserve	33.44	
Total		$57.44

[fol. 65]

Schedule 27-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

Schedule 28

Reconciliation of Surplus

Profit and loss surplus as disclosed by balance sheet at beginning of year	($73.66)
Corrected net income	2,166.76
Footing	$2,093.10

[fol. 66] General Gas and Electric Corporation

The French Creek Electric Company

Year Ended December 31, 1927

Schedule 28 (Continued)

Reconciliation of Surplus

Nontaxable income and additional deductions:

Brought forward	$2,093.10
Charges to reserve for bad debts	16.06
Total	$2,109.16

Unallowable deductions and additional income:		
Addition to reserve for bad debts	$40.06	
Increase in tax liability reserve	33.44	
		73.50
Profit and loss surplus disclosed by balance sheet at end of year		$2,035.66

Schedule 29

Bernville Light, Heat and Power Company

Net Income

Net income as disclosed by return		$5,216.24
As corrected		5,365.33
Adjustment		$149.09
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$11.75	
(b) Increase in tax liability reserve	137.34	
Total		$149.09

[fol. 67]

Schedule 29-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a. above.

General Gas and Electric Corporation

Bernville Light, Heat and Power Company

Year Ended December 31, 1927

Schedule 30

Reconciliation of Surplus

Profit and loss surplus as disclosed by balance sheet at beginning of year	$6,491.24
Corrected net income	5,365.33
Footing	$11,856.57

Nontaxable income and additional deductions:

Charges to reserve for bad debts		75.67
Total		$11,932.24

Unallowable deductions and additional income:

Addition to reserve for bad debts	$87.42	
Federal income taxes	600.00	
Increase in tax liability reserve	137.34	
		824.76
Profit and loss surplus as disclosed by balance sheet at end of year		$11,107.48

[fol. 68]

Schedule 31

Berks-Lehigh Electric Company

Net Income

Net income as disclosed by return	$3,723.10
As corrected	4,207.91
Adjustment	$484.81

Unallowable deductions and additional income:

(a) Bad debts adjusted to actual basis	$86.83	
(b) Increase in tax liability reserve	397.98	
Total		$484.81

Schedule 31-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 69]

General Gas and Electric Corporation

Berks-Lehigh Electric Company

Year Ended December 31, 1927

Schedule 32

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$9,184.40
Corrected net income		4,207.91
Footing		$13,392.31
Nontaxable income and additional deductions:		
Charges to reserve for bad debts		141.76
Total		$13,534.07
Unallowable deductions and additional income:		
Federal income taxes	$600.00	
Addition to reserve for bad debts	228.59	
Increase in tax liability reserve	397.98	
		1,226.57
Profit and loss surplus disclosed by balance sheet at end of year		$12,307.50

[fol. 70]

Schedule 33

Blue Mountain Electric Company

Net Income

Net income as disclosed by return		$28,388.81
As corrected		31,818.58
Adjustment		$3,429.77
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$102.95	
(b) Increase in tax liability reserve	3,326.82	
Total		$3,429.77

Schedule 33-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 71] General Gas and Electric Corporation

Blue Mountain Electric Company

Year Ended December 31, 1927

Schedule 34

Reconciliation of Surplus

Surplus and undivided profits as shown by balance sheet at close of preceding taxable period (schedule L, page 2)		$21,354.84
Corrected net income		31,818.58
Footing		$53,173.42
Nontaxable income and additional deductions:		
Charges to reserve for bad debts		188.24
Total		$53,361.66
Unallowable deductions and additional income:		
Federal income taxes	$2,443.08	
Addition to reserve for bad debts	291.19	
Dividends paid	1,750.00	
Increase in tax liability reserve	3,326.82	
		7,811.09
Profit and loss surplus disclosed by balance sheet at end of year		$45,550.57

[fol. 72]

Schedule 35

Niantic Electric Light and Power Company

Period July 1, 1927 to October 1, 1927

Net Income

Net income as disclosed by return	$507.72
As corrected	518.95
Adjustment	$11.23

Unallowable deductions and additional income:

(a) Increase in tax liability reserve	$11.23

Schedule 35-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 73]

General Gas and Electric Company

Niantic Electric Light and Power Company

Period from January 1, 1927 to October 1, 1927

Schedule 36

Reconciliation of Surplus

Surplus and undivided profits as shown by balance sheet at close of preceding taxable period (schedule L, page 2)		$10,466.60
Corrected net income		518.95
Footing		$10,985.55
Nontaxable income and additional deductions		None.
Total		$10,985.55
Unallowable deductions and additional income:		
Dividends paid	$2,959.00	
Increase in tax liability reserve	11.23	
		2,970.23
Profit and loss surplus disclosed by balance sheet at end of taxable period		$8,015.32

[fol. 74]

Schedule 37

The Jersey Corporation

Year Ended December 31, 1927

Net Income

Net income as disclosed by return	($8,730.06)
As corrected	(6,570.13)
Net adjustment	$2,159.93

Unallowable deductions and additional income:

(a) Increase in tax liability reserve	$5,725.00

Nontaxable income and additional deductions:

(b) Depreciation underaccrued	3,565.07
Net adjustment as above	$2,159.93

Schedule 37-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

General Gas and Electric Corporation

The Jersey Corporation

Year Ended December 31, 1927

Schedule 37-a (Continued)

Explanation of Items Changed (Continued)

(b) For explanation of this adjustment see item (b), schedule 7-a, above. The computation of the amount is as follows:

[fol. 75]

Average assets for the year	$118,835.70
Depreciation rate	3%
Depreciation sustained	$3,565.07
Amount deducted in return	None.
Amount allowed as above	$3,565.07

Schedule 38

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	($5,952.71)
Corrected net income	(6,570.13)
Footing	($12,522.84)
Nontaxable income and additional deductions:	
Depreciation underaccrued	3,565.07
Total	($8,957.77)
Unallowable deductions and additional income:	
Increase in tax liability reserve	5,725.00
Profit and loss surplus disclosed by balance sheet at end of year	($14,682.77)

Schedule 39

New Jersey Power and Light Company

Net Income

Net income as disclosed by return	$30,309.01
As corrected	700,160.32
Net adjustment	$669,851.31

[fol. 76] General Gas and Electric Corporation

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 39 (Continued)

Net Income

Unallowable deductions and additional income:

(a) Excess credit to reserve for bad debts	$4,500.00
(b) Amortization account plant revaluation	89,314.53
(c) Credit to reserve for injuries and damages	339.22
(d) Increase in tax liability reserve	16,848.12
(e) Depreciation overaccrued	251,527.73
(f) Amortized bond discount overaccrued	307,321.71
Total adjustment	$669,851.31

Schedule 39-a

Explanation of Items Changed

(a) This item represents a portion of the increase in the reserve for bad debts which was taken as a deduction from gross income in your income tax return for the taxable years. Since an examination of your books of account and records indicates that the losses sustained in prior years are relatively small, the above amount is held to be excessive and is disallowed in accordance with the provisions of sections 214(a) (7) and 234(a) (5) of the Revenue Act of 1926 and articles 151 and 155, Regulations 69. The amount is computed as follows:

[fol. 77] Amount added to the reserve and deducted in return	$8,700.00
Addition considered reasonable	4,200.00
Amount disallowed as above	$4,500.00

(b) This item represents unamortized depreciation set up on your books of account and records during the year 1926, in connection with a revaluation of your plant account, for prior years and the amount is disallowed as a deduction from gross income in accordance with the provisions of sections

214(a) and 234(a) of the Revenue Act of 1926 and article 112, Regulations 69.

(c) This item represents an amount claimed as a deduction from gross income, in your income tax return, as charges to the reserve for "Injuries and Damages" in excess of the actual amount charged as disclosed by your books of account and records and is disallowed in accordance with the provisions section 234(a) of the Revenue Act of 1926 and article 561, Regulations 69. The amount is computed as follows:

General Gas and Electric Corporation

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 39-a (Continued)

Explanation of Items Changed (Continued)

(c) (Continued)

Amount deducted in return	$3,079.37
Amount charged to reserve	2,740.15
Amount disallowed	$339.22

[fol. 78] (d) For explanation of this adjustment see item (c), schedule 5-a, above.

(e) For explanation of this adjustment see item (d), schedule 5-a, above. The amount is computed as follows:

Plant account January 1, 1927		$11,103,348.77
Less:		
Land	$1,132,220.01	
Obsolete Generating Plant	214,124.64	
Intangibles	677,235.45	
Appreciation	1,931,096.69	
		3,954,676.79
Depreciable assets at January 1, 1927		$7,148,671.98
Plant account at December 31, 1927		$12,683,499.91

Less:		
Land	$1,247,300.83	
Organization	330,500.37	
Engineering	42,290.54	
Interest	170,943.37	
Intangibles	677,235.45	
Obsolete Generating Plant	214,124.64	
Appreciation	1,931,096.69	
		4,613,491.89
Depreciable assets at December 31, 1927		$8,070,008.02
Average depreciable assets for the year: ($7,148,671.98 plus $8,070,008.02)		$7,609,340.00
2		

[fol. 79] **General Gas and Electric Corporation**

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 39-a (Continued)

Explanation of Items Changed (Continued)

(e) (Continued)

Average depreciable assets for year brought forward	$7,609,340.00
Depreciation rate	2%
Depreciation deducted in return	$403,714.53
Depreciation sustained ($7,609,340.00 times 2%)	152,186.80
Amount disallowed as above	$251,527.73

(f) This item represents the balance of unamortized discount and expense, at December 31, 1926, plus the premium paid in connection with the redemption and refunding of $2,087,000.00 per value of the corporations First Mortgage 5% twenty year bonds, due in 1936. Since the bonds were retired with the proceeds of a refunding issue of first mortgage 5% bonds due in 1956, the Bureau holds that the above

amount should be amortized over the life of the refunding issue. The amount is computed as follows:

[fol. 80] Unamortized discount and expenses at December 31, 1926 applicable to bonds due in 1936, redeemed	$212,442.13
Premium paid in connection with redemption	104,350.00
Total discount and premium	$316,792.13
Less:	
Amount amortized during 1927	9,470.42
Amount disallowed as above	$307,321.71

Schedule 40

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$555,338.48
Corrected net income	700,160.32
Footing	$1,255,498.80

[fol. 81] General Gas and Electric Corporation

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 40 (Continued)

Reconciliation of Surplus

Brought forward		$1,255,498.80
Notaxable income and additional deductions:		
Interest charged to construction	$19,222.71	
Net charges to reserve for injuries and damages	2,740.15	
Loss on sale of capital assets	74,392.88	
Taxes charged to capital account	377.15	
		96,732.89
Total		$1,352,231.69

Unallowable deductions and additional income:

Federal income taxes	$51,193.66	
Additions to reserve for injuries and damages	6,000.00	
Excess credit to reserve for bad debts	4,500.00	
Dividends paid	365,703.68	
Increase in tax liability reserve	16,848.12	
Depreciation overaccrued	251,527.73	
		695,773.19
Profit and loss surplus disclosed by balance sheet at end of year		$656,458.50

[fol. 82]

Schedule 41

Northern Pennsylvania Power Company

Net Income

Net income as disclosed by return	$60,455.19
As corrected	190,999.41
Adjustment	$130,544.22

Unallowable deductions and additional income:

(a) Bad debts adjusted to actual basis	$2,265.46	
(b) Excessive loss on sale of capital assets	9,597.96	
(c) Increase in tax liability reserve	21,396.92	
(d) Depreciation overaccrued	64,136.67	
(e) Amortization of discount and expenses overaccrued	32,634.71	
(f) Premium paid for bonds reacquired for sinking fund	512.50	
Total adjustment		$130,544.22

General Gas and Electric Corporation

Northern Pennsylvania Power Company

Year Ended December 31, 1927

Schedule 41-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above. The amount is computed as follows:

[fol. 83] Addition to reserve for bad debts deducted in return	$4,800.00
Charges to the reserve allowed	2,534.54
Excessive deduction disallowed	$2,265.46

(b) This item represents an excessive loss deducted from gross income in your income tax return, in connection with the sale of capital assets during the taxable year and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 and article 1591, Regulations 69. The amount is computed as follows:

Amount deducted in return			$37,506.40
Corrected loss sustained:			
Cost of property sold		$58,425.24	
Less:			
Depreciation sustained	$27,343.92		
Sale price	3,172.88		
		30,516.80	
Corrected loss			27,908.44
Excessive loss as above			$9,597.96

(c) For explanation of this adjustment see item (c), schedule 5-a, above.

(d) For explanation of this adjustment see item (d), schedule 5-a, above. The amount is computed as follows:

Plant account January 1, 1927	$3,562,054.80
Less:	
Non depreciable assets	942,545.23
Depreciable assets at January 1, 1927	$2,619,509.57
Plant account at December 31, 1927	$4,109,368.74

[fol. 84] **General Gas and Electric Corporation**

Northern Pennsylvania Power Company

Year Ended December 31, 1927

Schedule 41-a (Continued)

Explanation of Items Changed (Continued)

(d) (Continued)

Brought forward	$4,109,368.74
Less:	
Nondepreciable assets	942,545.23
Depreciable assets at December 31, 1927	$3,166,823.51
Average depreciable assets for the year: $\frac{(\$2,619,509.57 \text{ plus } \$3,166,823.51)}{2}$	$2,893,166.54
Depreciation rate	2%
Depreciation deducted in return	$122,000.00
Depreciation sustained: ($2,893,166.54 times 2%)	57,863.33
Amount disallowed as above	$64,136.67

(e) For explanation of this adjustment see item (f), schedule 39-a, above. The amount is computed as follows:

Unamortized discount and expenses on $183,800.00 par value of first mortgage 6% bonds refunded	$23,444.71
5% Premium paid at date of redemption	9,190.00
Total amount disallowed	$32,634.71

(f) Inasmuch as the bonds, on which this premium was paid, have been placed in the sinking fund and not retired, the above amount is disallowed as a deduction from gross income in accordance with the provisions of article 545(1) (b), Regulations 69.

[fol. 85] General Gas and Electric Corporation

Northern Pennsylvania Power Company

Year Ended December 31, 1927

Schedule 42

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$107,118.35
Corrected net income		190,999.41
Footing		$298,117.76
Nontaxable income and additional deductions:		
Interest charged to construction	$4,790.24	
Dismantling cost charged to depreciation reserve	5,505.91	
Loss on sale of capital assets	27,908.44	
Taxes charged to capital accounts	1,228.20	
Dividends received	30.00	
Charges to reserve for bad debts	2,534.54	
		41,997.33
Total		$340,115.09
Unallowable deductions and additional income:		
Federal income taxes	$18,319.17	
Addition to reserve for bad debts	4,800.00	
Dividends paid	117,843.02	
Increase in tax liability reserve	21,396.92	
Depreciation overaccrued	64,136.67	
Adjustment of debt discount and expense charged to income	5,033.04	
Premium paid on bonds reacquired for sinking fund	512.50	
		232,041.32
Profit and loss surplus disclosed by balance sheet at end of year		$108,073.77

[fol. 86]

Schedule 43

The Waverly Electric Light and Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

General Gas and Electric Corporation

The Nicholson Light, Heat and Power Company

Period January 1, 1927 to October 31, 1927

Schedule 44

Net Income

Net income as disclosed by return	$1,596.29
As corrected	1,628.73
Adjustment	$32.44

Unallowable deductions and additional income:

(a) Adjustment of cash—cr. to profit and loss	$32.44

Schedule 44-a

Explanation of Items Changed

(a) This item represents an adjustment of the cash account the amount of which was credited to profit and loss during the taxable year and is added to taxable income in accordance with the provisions of section 233(a) of the Revenue Act of 1926 and article 541, Regulations 69.

[fol. 87]

Schedule 45

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of period	$10,306.42
Corrected net income	1,628.73
Footing	$11,935.15
Nontaxable income and additional deductions	None.
Total	$11,935.15

Unallowable deductions and additional income:

Federal income taxes	$207.66	
Dividends paid	11,727.49	
		11,935.15
Profit and loss surplus disclosed by balance sheet at end of year		None.

[fol. 88] General Gas and Electric Corporation

Broad River Power Company

Year Ended December 31, 1927

Schedule 46

Net Income

Net income as disclosed by return	$16,091.26
As corrected	399,730.80
Net adjustment	$383,639.54

Unallowable deductions and additional income:

(a) Cost of stock of Parr Shoals Power Company	$1,005.00	
(b) Intercompany accounts receivable	122,123.47	
(c) Cost of changing equipment	72,019.77	
(d) Obsolescence	30,414.19	
(e) Increase in tax liability reserve	419.82	
(f) Amortized discount and expense on bonds of Parr Shoals Power Company	11,436.96	
(g) Profit on bonds reacquired and retired	20,550.00	
(h) Loss on sale of capital assets charged to reserve for renewals and replacements	125,670.33	
Total adjustment as above		$383,639.54

[fol. 89]

Schedule 46-a

Explanation of Items Changed

(a) This item represents the cost of capital stock of the Parr Shoals Power Company acquired during the taxable year which was charged to reserve for contingencies and deducted from gross income in your income tax return. The amount is held to be a capital expenditure and is disallowed in accordance with the provisions of section 235 of the Revenue Act of 1926 and article 581, Regulations 69.

(b) This item represents an intercompany transaction and is disallowed as a deduction from gross income in accordance with section 240 of the Revenue Act of 1926, and article 635, Regulations 69.

General Gas and Electric Corporation

Broad River Power Company

Year Ended December 31, 1927

Schedule 46-a (Continued)

Explanation of Items Changed (Continued)

(c) This item represents the cost incurred in connection with the conversion of the corporation's equipment from 40 to 60 cycle which was charged to the reserve for contingencies, and taken as a deduction from gross income in your income tax return for the taxable year. The amount is held to be a capital expenditure and is disallowed in accordance with the provisions of section 235 of the Revenue Act of 1926 and article 581, Regulations 69.

[fol. 90] (d) Inasmuch as this item has not been charged off the books, and no information has been submitted to show how the computation was made, the amount is disallowed as a deduction from gross income in accordance with the provisions of section 214(a) (8) of the Revenue Act of 1926 and article 166, Regulations 69.

(e) For explanation of this adjustment see item (c), schedule 5-a, above.

(f) This item represents unamortized discount and expenses acquired by the corporation together with the assets of other companies and the amount is disallowed as a deduction from gross income in accordance with the provisions of the decision of the United States Board of Tax Appeals in the case of the Western Maryland Railroad Company as published in United States Board of Tax Appeals Reports, volume 12, page 889.

(g) This item represents profit realized during the taxable year in connection with the reacquirement and retirement of $822,000.00 par value of First Mortgage 5% Sinking Fund Bonds and the amount is added to taxable income in accordance with the provisions of section 233(a) of the Revenue Act of 1926 and article 545(a) (c), Regulations 69.

(h) Inasmuch as this item has not been charged off the books, and no information has been submitted to show how the computation was made, the amount is disallowed as a deduction from gross income in accordance with the provisions of section 204 of the Revenue Act of 1926 and article 1591, Regulations 69.

[fol. 91] General Gas and Electric Corporation

Broad River Power Company

Year Ended December 31, 1927

Schedule 47

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$627,402.59
Corrected net income		399,730.80
Footing		$1,027,133.39
Nontaxable income and additional deductions:		
Interest charged to construction	$41,293.20	
Amortized bond discount and expense	1,107.79	
Charges to reserve for contingencies	340,046.15	
Taxes capitalized on books	1,295.74	
Profit on bonds reacquired for sinking fund	1,322.50	
		385,065.38
Total		$1,412,198.77

Unallowable deductions and additional income:

Federal income taxes	$35,768.89	
Dividends paid	438,849.93	
Cost of capital stock of Parr Shoals Power Company	1,005.00	
Intercompany accounts receivable	122,123.47	
Cost of changing equipment to 60 Cycle	72,019.77	
Obsolescence	30,414.19	
Increase in tax liability reserve	419.82	
Amortized discount and expense on bonds of Parr Shoals Power Company	11,436.96	
Profits on bonds reacquired and retired	20,550.00	
		732,588.03
Profit and loss surplus disclosed by balance sheet at end of year		$679,610.74

[fol. 92] Schedule 48

Columbia Railway Gas and Electric Company

Net Income

Net income as disclosed by return	($335,607.57)
As corrected	(57,157.39)
Net adjustment	$278,450.18

General Gas and Electric Corporation

Columbia Railway Gas and Electric Company

Year Ended December 31, 1927

Schedule 48 (Continued)

Net Income

Unallowable deductions and additional income:

(a) Obsolescence	$274,117.51
(b) Loss on sale of capital assets	1,236.78
(c) Increase in tax liability reserve	3,095.89
Total adjustment	$278,450.18

Schedule 48-a

Explanation of Items Changed

(a) This item represents obsolescence, claimed as a deduction from gross income in your income tax return for the taxable year, and since the information submitted with the return does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 214(a) (8) of the Revenue Act of 1926 and article 166, Regulations 69.

[fol. 93] (b) Since the information submitted with respect to this item does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 and article 1591, Regulations 69.

(c) For explanation of this adjustment see item (c), schedule 5-a, above.

Schedule 49

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$9,054.19
Corrected net income	(57,157.39)
Footing	($48,103.20)
Nontaxable income and additional deductions:	
Charges to reserve for contingencies	316,338.94
Total	$268,235.74

[fol. 94] General Gas and Electric Corporation

Columbia Railway Gas and Electric Company

Year Ended December 31, 1927

Schedule 49 (Continued)

Reconciliation of Surplus

Brought forward	$268,235.74

Unallowable deductions and additional income:

Obsolescence	$274,117.51	
Increase in tax liability reserve	3,095.89	
Loss on sale of capital assets	1,236.78	
		278,450.18
Profit and loss surplus disclosed by balance sheet at end of year		($10,214.44)

Schedule 50

Public Service Company of South Carolina

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 51

Columbia Gas Light Company

Net Income

Net income as diclosed by return	None.
As corrected	No change.

[foi. 95]

Schedule 52

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	($52,538.17)
Corrected net income	None.
Footing	($52,538.17)

Nontaxable income and additional deductions:

Donation and cancellation of 1800 shares of capital stock	180,000.00
Profit and loss surplus disclosed by balance sheet at end of year	$127,461.83

[fol. 96] General Gas and Electric Corporation
North Carolina Public Service Company
Period January 1, 1927 to August 1, 1927
Schedule 53
Net Income

Net income as diclosed by return		$170,587.90
As corrected		217,488.05
Net adjustment		$46,900.15
Unallowable deductions and additional income:		
(a) Charges to reserve for bad debts	$4,365.90	
(b) Bad debts charged to reserve for contingencies	3,034.91	
(c) Profit on bonds purchased and retired	65.24	
(d) Investment in securities written down	1,000.00	
(e) Depreciation	70,000.00	
(f) Profit on sale of capital assets	21,868.10	
(g) Amortized discount and expense on bonds of other companies	4,451.09	
Total		$104,785.24
Nontaxable income and additional deductions:		
(h) Addition to reserve for bad debts	$12,600.00	
(i) Decrease in tax liability reserve	45,285.09	
Total		57,885.09
Net adjustment as above		$46,900.15

[fol. 97] Schedule 53-a

Explanation of Items Changed

(a) and (b) These items represent losses sustained during the taxable year, in connection with accounts receivable, charged to the reserves for bad debts and contingencies and taken as deductions from gross in your income tax return. Since the corporation has established a reserve for bad debts and reasonable amounts credited thereto have been allowed as deductions in prior years the above-stated amounts are disallowed. The amount accrued and credited to the reserve for bad debts is allowed as a deduction under item (h) below, in accordance with the provisions of section 234(a) (5) of the Revenue Act of 1926 and article 155, Regulations 69.

General Gas and Electric Corporation

North Carolina Public Service Company

Period January 1, 1927 to August 1, 1927

Schedule 53-a (Continued)

Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see item (g), schedule 46-a, above.

(d) This item represents a reduction in the value of 12 shares of South Atlantic Export Company preferred stock and the amount is disallowed as a deduction in accordance with the provisions of section 234(a) (4) of the Revenue Act of 1926 and article 144, Regulations 69.

[fol. 98] (e) Inasmuch as the information submitted relative to this deduction for depreciation does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 214(a) (8) of the Revenue Act of 1926 and articles 161 and 162, Regulations 69.

(f) This item represents losses sustained in connection with the sale, or other disposition, of capital assets during the taxable year and since the information submitted does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 234(a) (4) of the Revenue Act of 1926 and articles 141 and 1591, Regulations 69.

(g) For explanation of this adjustment see item (f), schedule 46-a, above.

(h) For explanation of this adjustment see items (a) and (b), this schedule.

(i) For explanation of this adjustment see item (c), schedule 5-a, above.

Schedule 54

Year Ended December 31, 1927

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$418,597.22
Corrected net income	217,488.05
Footing	$636,085.27

[fol. 99] General Gas and Electric Corporation

North Carolina Public Service Company

Year Ended December 31, 1927

Schedule 54 (Continued)

Reconciliation of Surplus

Brought forward		$636,085.27
Nontaxable income and additional deductions:		
Dividends received from stock of domestic corporations	$162.50	
Interest charged to construction	4,934.10	
Charges to reserve for bad debts	13,416.78	
Charges to reserve for injuries and damages	1,966.56	
Charges to reserve for depreciation on autos	450.00	
Charges to reserve for contingencies	106,231.99	
Taxes charged to cost of assets on books	246.08	
Decrease in tax liability reserve	45,285.09	
Federal income taxes credited to surplus	38,281.49	
		210,974.59
Total		$847,059.86

Unallowable deductions and additional income:

Dividends paid	$206,469.91	
Addition to reserve for injuries and damages	2,100.00	
Discount and expense deducted in 1926 charged to profit and loss in 1927	3,764.88	
Charges to reserve for bad debts	4,365.90	
Bad debts charged to reserve for contingencies	3,034.91	
Investment in securities written down	1,000.00	
Depreciation not charged off	70,000.00	
Profit on sale of capital assets	21,868.10	
Amortized discount on bonds of other companies	4,451.09	
		317,054.79
Profit and loss surplus disclosed by balance sheet at end of year		$530,005.07

[fol. 100] General Gas and Electric Corporation

Salisbury and Spencer Railway Company

Period January 1, 1927 to August 1, 1927

Schedule 55

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 56

Greensboro Bus Company

Net Income

Net income as disclosed by return	(2,006.77)
As corrected	No change.

Schedule 57

Year Ended December 31, 1927

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	($6,736.53)
Income disclosed by return	(2,006.77)
Profit and loss surplus disclosed by balance sheet at end of year	($8,743.30)

[fol. 101]

Schedule 58

Saylorsburg Light and Power Company

Period January 1, 1927 to July 31, 1927

Net Income

Net income as disclosed by return	$2,000.31
As corrected	1,978.67
Adjustment	$21.64

Nontaxable income and additional deductions:

(a) Decrease in tax liability reserve	$21.64

Schedule 58-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), Schedule 5-a, above.

[fol. 102]

General Gas and Electric Corporation

Saylorsburg Light and Power Company

Year Ended December 31, 1927

Schedule 59

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$39,146.34
Corrected net income	1,978.67
Footing	$41,125.01

Nontaxable income and additional deductions:	
Decrease in tax liability reserve	21.64
Total	$41,146.65
Unallowable deductions and additional income:	
Federal income taxes	115.00
Profit and loss surplus disclosed by balance sheet at end of year	$41,031.65

[fol. 103] Schedule 60

Pen Argyl Gas Company

Period January 1, 1927 to July 31, 1927

Net Income

Net income as disclosed by return	($2,278.04)
As corrected	(2,196.99)
Adjustment	$81.05
Unallowable deductions and additional income:	
(a) Increase in tax liability reserve	$81.05

Schedule 60-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 104] General Gas and Electric Corporation

Pen Argyl Gas Company

Year Ended December 31, 1927

Schedule 61

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$13,262.65
Corrected net income	(2,196.99)
Footing	$11,065.66

Nontaxable income and additional deductions:

Bad debts written off		250.69
Total		$11,316.35

Unallowable deductions and additional income:

Federal income taxes	$175.00	
Increase in tax liability reserve	81.05	
		256.05
Profit and loss surplus disclosed by balance sheet at end of year		$11,060.30

Schedule 62

New Jersey Power Corporation

Period January 1, 1927 to July 5, 1927

Net Income

Net income as disclosed by return	($1,275.00)
As corrected	No change.

[fol. 105]

General Gas and Electric Corporation

Year ended December 31, 1927

Schedule 63

Consolidated Net Income

Net Income as corrected:

General Gas and Electric Corporation	Schedule 1	$1,136,784.77
Reading Transit Company	5	280,838.21
Neversink Mountain Railway Company	13	-0-
Reading and Hamburg Railway Company	15	-0-
Womelsdorf & Myerstown Railway Company	16	-0-
Hamburg Gas and Electric Company	17	73,085.46
Topton Electric Light & Power Company	19	12,250.22
Weisenberg Township Electric Light & Power Company	21	1,029.03
Ortanna Electric Light and Power Company	23	1,805.31
Birdsboro Electric Company	25	16,163.57
The French Creek Electric Company	27	2,166.76
Bernville Light, Heat and Power Company	29	5,365.33
Berks-Lehigh Electric Company	31	4,207.91
Blue Mountain Electric Company	33	31,818.58
Niantic Electric Light and Power Company	35	518.95
New Jersey Power and Light Company	39	700,160.32
Northern Pennsylvania Power Company	41	190,999.41
The Waverly Electric Light and Power Company	43	-0-

Schedule 63—Consolidated Net Income—Continued

Net Income as corrected—Continued

The Nicholson Light, Heat and Power Company	44	1,628.73	
Broad River Power Company	46	399,730.80	
Public Service Company of South Carolina	50	-0-	
Columbia Gas Light Company	51	-0-	
North Carolina Public Service Company	53	217,488.05	
Salisbury and Spencer Railway Company	55	-0-	
Saylorsburg Light and Power Company	58	1,978.67	
Total			$3,078,020.08
Net losses as corrected:			
The General Finance Corporation	Schedule 3	$38,881.87	
Oley Valley Railway Company	7	2,463.83	
Oley Valley Quarry Company	9	143.52	
Reading Transit Bus Company	11	1,999.40	
The Jersey Corporation	37	6,570.13	
Columbia Railway Gas and Electric Company	48	57,156.39	
Greensboro Bus Company	56	2,006.77	
Pen Argyl Gas Company	60	2,196.99	
New Jersey Power Corporation	62	1,275.00	
Total			112,694.90
Consolidated net income			$2,965,325.18

General Gas and Electric Corporation Year ended December 31, 1927

[fol. 106]

Schedule 64

Computation of Tax—1927 Rates

		Income	Tax
Corrected consolidated net income, schedule 63 taxable at 13½%		$2,965,325.18	$400,318.90
Tax previously assessed:			
Original No. 401,703	$24,300.00		
Additional (February 1931, Page 1, Line 3 # 1.)	128,855.54	153,155.54	
Less:			
Amount of tax allocated to Binghamton Light, Heat and Power Company		30,740.46	122,415.08
Additional tax to be assessed			$277,903.82

Exhibit "B" to Petition

General Gas & Electric Corporation

Taxpayers engaged in related trades or businesses	Period of ownership or control
The same as determined by the respondent except:	The same as determined by the respondent except:
(1) Florida Public Service Company	January 1, 1927 to December 31, 1927
(2) Lexington Water Power Company	January 1, 1927 to December 31, 1927
(3) South Carolina Gas & Electric Company	January 1, 1927 to July 31, 1927
(4) Metropolitan Edison Company	January 1, 1927 to December 31, 1927
(5) Binghamton Light, Heat & Power Company	January 1, 1927 to December 31, 1927

[fol. 107] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER—Filed September 26, 1931

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above named taxpayer, admits and denies as follows:

I. Admits the allegations contained in Paragraph I.

II. Admits the allegations contained in Paragraph II.

III. Admits the allegations contained in Paragraph III.

IV. Admits that the taxes in controversy are income taxes for the year ended December 31, 1927, and that the amount in controversy is as shown by the notice of deficiency, a copy of which is attached to the petition and marked Exhibit "A," as alleged in Paragraph III(g) of the petition; denies that the amount in controversy is $463,957.88.

[fol. 108] V (A) to (E), inclusive. Denies that the Commissioner has committed any errors as alleged in subparagraphs (A) to (E), inclusive, of Paragraph V.

VI(A), (A-1) and (A-2). Denies the allegations contained in subparagraphs (A), (A-1) and (A-2) of Paragraph VI.

VI(B), (B-1), (B-2) and (B-3). Denies the allegations contained in subparagraphs (B), (B-1), (B-2) and (B-3) of Paragraph VI.

VI(C) (1) to (61), inclusive. Denies the allegations contained in subparagraphs (1) to (61), inclusive, of Paragraph VI(C).

VI(D) (1) to (3), inclusive. Denies the allegations contained in subparagraphs (1) to (3), inclusive, of Paragraph VI(D).

VI(E). Denies the allegations contained in Paragraph VI(E).

VII. Denies generally and specifically each and every allegation contained in taxpayer's petition and not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue.

Of Counsel: Eugene Meacham, C. E. Lowery, Special Attorneys, Bureau of Internal Revenue.

[fol. 109] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON, D. C.

Docket No. 59,469

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

Docket No. 59,470

BINGHAMTON LIGHT, HEAT AND POWER COMPANY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

STIPULATION OF FACTS—Filed January 3, 1935

It is hereby stipulated and agreed, by and between the parties hereto, by their respective attorneys, that the above-entitled proceedings be consolidated for hearing before the Board of Tax Appeals, and that the following facts shall be taken as true, provided this stipulation shall be without prejudice to the right of either party to present further evidence not inconsistent with the facts herein stipulated.

1. The petitioner, General Gas & Electric Corporation, a corporation duly organized and existing under the laws [fol. 110] of the State of Delaware, is and was at all times material to this proceeding, engaged in the business of holding securities and thus controlling public utility subsidiaries serving in the States of New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina and Florida.

2. The petitioners, with their affiliated taxperers, filed a consolidated income tax return for the calendar year 1927. A list of the affiliated taxpayers appears on pages 1 to 4, inclusive, of the deficiency notice, being Exhibit A at-

tached to the petition, Docket No. 59,469, and to which should be added the name of Binghamton Light, Heat and Power Company as an affiliated subsidiary of General Gas & Electric Corporation, which joined in filing the said consolidated return. By an agreement signed by the parent corporation and each of its subsidiaries, the entire income tax liability of each of the petitioners and their affiliates, in these consolidated appeals for the year 1927 is to be assessed against and paid by the said General Gas & Electric Corporation.

3. The North Penn Power Company was a corporation organized under the laws of Pennsylvania in March, 1923. In 1923 it issued and sold its First Mortgage Thirty year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale. The trust agreement under which said bonds were issued provided that they might be called and redeemed at 105% of the principal amount on any interest date up to February 1, 1933. On or about March 9, 1926, the North Penn Power [fol. 111] Company transferred all its assets and liabilities to the Northern Pennsylvania Power Company, an affiliated subsidiary of the petitioner, under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876 P. L. 30 of the Laws of the Commonwealth of Pennsylvania, with the sanction and approval of the Public Service Commission of said commonwealth under Section 3(c) Article III and Sections 18 and 19 Article V of the Public Service Company Law with the issuance of a report, order and certificate of public convenience. (Copies of the report, order and certificate of public convenience and the application of the companies to the Public Service Commission are attached hereto, and made a part hereof, marked Exhibit A).

As a result of said transfer the Northern Pennsylvania Power Company took over all the assets and assumed all the liabilities of the North Penn Power Company including the liability on the aforesaid Bonds which constituted a prior lien on the assets so transferred. The further consideration for said transfer was cash, for the retirement of the preferred ~~stock,~~ and common stock of said transferee issued in exchange for the surrender of the common stock of the transferor. The principal amount of the bonds outstanding was $552,700.00 on date of transfer. The unamortized debt discount and expense incurred upon the issuance and sale of said bonds was transferred as a deferred charge asset on the books of Northern Pennsylvania Power Company. The [fol. 112] balance of this unamortized debt discount and expense amounted to $70,499.79 at the time the $368,900.00 principal amount of bonds were retired in 1926.

In 1926 the Northern Pennsylvania Power Company called for redemption on February 1, 1927, all the outstanding bonds and redeemed $368,900 principal amount of said bonds (being 66.745% of the principal amount of $552,700.00 then outstanding) thereby incurring and paying premiums in the amount of $18,445.00 (being 5% of the principal amount of the bonds retired) in accordance with the terms of the Trust Indenture. On or about February 1, 1927, the balance of the outstanding bonds in the amount of $183,800 were redeemed, thereby incurring and paying premiums in the amount of $9,190.00 (being 5% of the principal amount of the bonds retired in accordance with the terms of the Trust Indenture).

The date of the redemption was February 1, 1927, but by proper corporate authorization the trustee under the Indenture accepted for retirement said $368,900.00 principal amount of bonds at 105% and accrued interest to the date of retirement during 1926, and the balance of the outstanding bonds amounting to $183,800, were retired on or about February 1, 1927 at 105. The petitioners in dockets nos. 52,639, 52,680 and 49,079, separately stipulated~~,~~ ~~but~~ consolidated for hearing purposes with this proceeding, claimed the right to deduct from the gross income of Northern Pennsylvania Power Company for 1926 said premiums amounting to $18,445.00 and unamortized debt discount and [fol. 113] expense amounting to $47,058.08, (being 66.745% of the aforesaid $70,499.79). The petitioners claim the right to deduct the aforesaid premium of $9,190.00 and said unamortized debt discount and expense amounting to $23,441.71 (being the balance of the aforesaid $70,499.79) unamortized upon the aforesaid retirements at February 1, 1927. Said amounts of $23,441.71 unamortized debt discount and expense and $9,190.00 premiums on retirement of said bonds in 1927, were not taken as an expense on the books of the Northern Pennsylvania Power Company, but were transferred to debt discount and expense applicable to the refunding issue. The funds for the retirement of said first mortgage thirty year sinking fund 6% and 7% Gold Bonds were obtained from the proceeds of sale in 1926 of $1,-

950,000.00 principal amount Northern Pennsylvania Power Company, First and Refunding Mortgage Bonds Series A due June 1, 1956.

4. New Jersey Power and Light Company was incorporated under the laws of the State of New Jersey in December, 1915. On or about February 1, 1916, it made and executed a certain indenture, excerpts from which are attached hereto and marked Exhibit B. Thereafter said New Jersey Power and Light Company issued and sold to the public its First Mortgage 5% Gold Bonds, due February 1, 1936, provided for in said indenture, as follows:

[fol. 114]

Year Issued	Principal Amount	Sales Price	
1916	$700,000.00 @ 86	$602,000.00	
1918	197,000.00 @ 80	157,600.00	
1918	23,000.00 @ 83	19,090.00	
1918	9,000.00 @ 84	7,560.00	
1919	62,000.00 @ 83	51,460.00	
1920	18,000.00 @ 80	14,400.00	
1921	361,000.00 @ 80	288,800.00	
1922	27,000.00 @ 100	27,000.00	(Issued for Property)
1922	100,000.00 @ 80	80,000.00	
1923	250,000.00 @ 87	217,500.00	
1923	200,000.00 @ 85½	171,000.00	
1924	465,000.00 @ 86½	402,225.00	
1924	97,000.00 @ 100	97,000.00	(Issued for Stock)
1925	180,000.00 @ 100	180,000.00	(Issued for Property)
Totals	$2,689,000.00	$2,315,635.00	
Total discount		$373,365.00	

5. During 1927 the New Jersey Power and Light Company retired all of said bonds then outstanding (principally on February 1, 1927), amounting to the sum of $2,087,000, at 105, in accordance with the terms of the indenture [illegible] article third Exhibit B) said premiums amounting to $1[illegible]350—at which time there was unamortized debt discount an[illegible] expense amounting to $179,687.23, of which $9,470.42 was allowed by the Commissioner as amortization over the life of the new bonds (see page 28 of deficiency notice, Ex-[fol. 115] hibit A attached to the petition in Docket No. 59,469), more particularly known as First Mortgage 5% Gold Bonds, due August 1, 1956, of which there were issued and sold on December 29, 1926, $6,000,000, the proceeds from the sale of which were employed to retire the aforesaid bonds due February 1, 1936. At the time of the aforesaid

retirement, none of the bonds were held by affiliated taxpayers.

6. The only issues submitted to the Board for redetermination in this proceeding are whether the respondent erred in refusing to allow as deductions from gross income of the petitioner's affiliated subsidiaries for the year 1927 the aforesaid premiums, retirement expenses and unamortized debt discounts and expenses. All other issues raised by the pleadings have been settled by agreement of the parties and the result of such settlement is reflected in the following stipulation as to the amounts of deficiency, to wit:

a. If the action of the respondent in disallowing the aforesaid premiums, debt retirement expenses and unamortized debt discounts and expense is sustained, the amount of the deficiency for the calendar year 1927 is $181,205.07.

b. If the action of the respondent in disallowing the aforesaid premiums, debt retirement expense and unamortized debt discounts and expenses is disapproved the amount of the deficiency is $139,733.08.

If the Board's decision is otherwise than indicated in paragraphs "a" or "b" supra, the deficiency should be de- [fol. 116] termined under Board Rule 50.

Francis J. Sweeney, Counsel for Petitioner. (Signed) Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, Counsel for the Respondent.

EXHIBIT "A" TO STIPULATION OF FACTS

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

STATE OF PENNSYLVANIA,
County of Dauphin, ss:

I, John G. Hopwood, Secretary of the Public Service Commission of the Commonwealth of Pennsylvania, do hereby certify that the papers hereto attached are true and correct copies of the report, order and certificate of public convenience issued by the Commission under date of March 9th, 1926, in re: Application North Penn Power Company and Northern Pennsylvania Power Company, for approval of the sale of the franchises and property of the former to the latter company, as the same remain of record in the offices of the Commission, at Application Docket No. 13917-1925.

[fol. 117] In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commission to be affixed hereto this twenty-fourth day of March, 1926.

Jno. G. Hopwood, Secretary, The Public Service Commission of the Commonwealth of Pennsylvania.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

A.13917—1925

In the Matter of the Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY, under Section 3(c), Article III, and Sections 18 and 19, Article V, of The Public Service Company Law, for the Approval of the Sale of the Property and Franchises of the Former to the Latter Company

CERTIFICATE OF PUBLIC CONVENIENCE

The Public Service Commission of the Commonwealth of Pennsylvania, hereby certifies that after an investigation and hearing had on the above entitled application, it has, by [fol. 118] its report and order made and entered, a copy of which is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, the Public Service Commission of the Commonwealth of Pennsylvania has caused these presents to be signed and sealed, and duly attested by its Secretary, at its office in the city of Harrisburg, this ninth day of March, 1926.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 119] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 13917—1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for the Approval of Sale of the Property and Franchises of the Former to the Latter Company

REPORT AND ORDER

By the COMMISSION:

This case being before the Commission upon petition of North Penn Power Company and Northern Pennsylvania Power Company, dated November 30, 1925, for the approval of sale of the property and franchises of the former to the latter company, as more fully described in the deed;

and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said petition is necessary and proper for the service, accommodation, convenience and safety of the [fol. 120] public, and that a certificate of Public Convenience be issued evidencing the Commission's approval thereof; Provided, that nothing in this proceeding which fixes or tends to fix the value of the property of either the vendor or vendee companies or the manner in which the vendee company records the transaction on its books of account shall be binding upon the Commission in any future proceeding requiring a determination by it of the fair value of the property and franchises of either of the companies

Now, to-wit, March 9, 1926, It is Ordered: That a Certificate of Public Convenience be issued evidencing the Commission's approval of the said sale in accordance with the deed.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 121] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application, Docket No. 1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of North Penn Power Company and Northern Pennsylvania Power Company respectfully represents:

1. The names and addresses of your petitioners are as follows: North Penn Power Company, Borough of Blossburg, Tioga County, Pennsylvania; Northern Pennsylvania Power Company, 207 Main Street, Borough of Towanda, Bradford County, Pennsylvania.

2. The name and address of your petitioners' attorney are: Hedley V. Cooke, 31 Nassau Street, New York City.

3. Except as otherwise stated, each of the corporations hereinafter named was duly organized for the purpose of [fol. 122] supplying light, heat and power by means of electricity to the public in the borough, town, city or district in the Commonwealth of Pennsylvania in the particular case mentioned, and to such persons, partnerships and corporations residing therein or adjacent thereto as might desire the same, under the Act of April 29, 1874, P. L. 75 as amended by the Act of May 8, 1889, P. L. 136 and the amendments and supplements thereto and received letters patent granting to it perpetual existence, the articles of association having been in each case duly recorded in the proper county.

4. Your petitioner North Penn Power Company was duly organized under the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated January 16, 1923 of the following corporations:

(1) The Blossburg Electric Light & Power Company (hereinafter called No. 2).

(2) The Mansfield Electric Company, which received letters patent dated October 14, 1897, for the Borough of Mansfield, Tioga County.

(3) Morris Run Electric Company, which received letters patent dated May 11, 1922, for the Township of Hamilton, Tioga County.

(4) Elkland Intertownship Electric Company, which re- [fol. 123] ceived letters patent dated January 15, 1923, for the Township of Elkland, Tioga County.

(5) Nelson Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Nelson, Tioga County.

(6) Lawrence Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Lawrence, Tioga County.

(7) Sullivan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Sullivan, Tioga County.

(8) Osceola Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Osceola, Tioga County.

(9) Lawrenceville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Lawrenceville, Tioga County.

(10) Richmond Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Richmond, Tioga County.

(11) Westfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Westfield, Tioga County.

[fol. 124] (12) Tioga Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Tioga, Tioga County.

(13) Elkland Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Elkland, Tioga County.

(14) Bloss Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Bloss, Tioga County.

(15) Duncan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Duncan, Tioga County.

(16) Westfield Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Westfield, Tioga County.

(17) Knoxville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Knoxville, Tioga County.

(18) Deerfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Deerfield, Tioga County.

(19) Tioga Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Town-[fol. 125] ship of Tioga, Tioga County.

(20) Ward Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Ward, Tioga County.

The Blossburg Electric Light & Power Company No. 2 was duly organized under the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated December 18, 1913 of:

(1) The Blossburg Electric Light & Power Company (No. 1) which received letters patent for the Borough of Blossburg, Tioga County, on December 6, 1897;

(2) The Covington Electric Light Company, which received letters patent for the Township of Covington, Tioga County, on November 24, 1913;

(3) Covington Township Electric Light Company, which received letters patent for the Borough of Covington, Tioga County (now Township of Putnam) on November 24, 1913;

all of which constituent companies last above mentioned had, in addition to their electric powers, the right to furnish heat by means of steam necessarily generated at their electric plants.

[fol. 126] Your petitioner North Penn Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed of the following corporations:

(1) The Canton Illuminating Company, which received letters patent dated April 6, 1899, for the Borough of Canton, County of Bradford. Deed dated September 29, 1923, approved by your Honorable Commission at Application Docket 9356 of 1923.

(2) Troy Electric Light, Heat & Power Company, which received letters patent dated December 27, 1904 for the Borough of Troy, County of Bradford. Deed dated September 27, 1923, approved by your Honorable Commission at Application Docket No. 9355/1923.

(3) Galeton Electric Company, which received letters patent dated October 13, 1922 for the Borough of Galeton, County of Potter. Deed dated November 8, 1923, approved by your Honorable Commission at Application Docket No. 9729/1923.

(4) Union North Penn Power Company, which received letters patent on November 11, 1923, for the Township of Union County of Tioga. Deed dated October 30, 1923, approved by your Honorable Commission at Application Docket No. 9536/1923.

[fol. 127] (5) Canton North Penn Power Company which received letters patent on September 11, 1923, for the Township of Canton, County of Bradford. Deed without date, approved by your Honorable Commission at Application Docket No. 9534/1923.

(6) Armenia North Penn Power Company which received letters patent on September 12, 1923 for the Township of Armenia, County of Bradford. Deed dated October 30, 1923, approved by your Honorable Commission at Application Docket No. 9535/1923.

(7) Columbia Township Bradford Electric Company, which received letters patent on October 9, 1923 for the Town-

ship of Columbia, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket 13708 of 1925.

(8) Alba North Penn Power Company, which received letters patent on January 14, 1924 for the Township of Alba, Bradford County. Deed dated August 22, 1925, approved by your Honorable Commission at Application Docket No. 13706/1925.

(9) Troy Township Bradford Electric Company which received letters patent on October 9, 1923 for Troy Township, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket No. 13707/1925.

Your petitioner North Penn Power Company has an authorized capital stock of (a) 20,000 shares of Series A 7% [fol. 128] Cumulative Preferred stock of a par value of $50 each of which 2,538 shares were outstanding on October 31, 1925; (b) 1,200 shares of Series B 6% Non-cumulative Preferred stock of a par value of $50 each of which 851 shares were outstanding in the hands of the public and 15 shares were in the company's treasury on October 31, 1925; (c) 12,000 shares of Common stock all of which were on October 31, 1925 and now are outstanding.

Your said petitioner has an authorized indebtedness of $2,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $562,000 principal amount of Thirty year 6% Sinking Fund Gold Bonds secured by First Mortgage to Harrisburg Trust Company as Trustee, dated February 1, 1923, of which $9,300 principal amount were in the company's treasury.

5. Your petitioner, Northern Pennsylvania Power Company, was duly organized under the provisions of the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under the name Towanda Gas & Electric Company, pursuant to agreement dated July 1, 1920, of Towanda Gas & Water Company and Towanda Electric Illuminating Company, which merger your Honorable Commission approved by the issuance of a certificate of public convenience at Application Docket No. 4203 of 1920. Thereafter your said petitioner by proceedings duly had pursuant to the statute in such case

made and provided, changed its name to Northern Pennsylvania Power Company.

[fol. 129] Said Towanda Gas & Water Company was incorporated by special Act of Assembly of the Commonwealth of Pennsylvania, approved April 13, 1859 being Act No. 711, Laws of 1859, which granted to said company "exclusive authority to supply with gas light or water the Borough of Towanda and its vicinity in the County of Bradford and such persons, partnerships and corporations, residing therein as may desire the same • • •."

Said Towanda Electric Illuminating Company was incorporated on December 27, 1889, and received letters patent for the Borough of Towanda, Bradford County.

Your petitioner Northern Pennsylvania Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed, of the following corporations, and received deeds therefor dated August 20, 1925, which were approved by your Honorable Commission at Application Docket Nos. 13607 to 13626, both inclusive of 1925, and were duly recorded in Bradford County, Pennsylvania:

(1) Monroeton Electric Company, which received letters patent dated July 12, 1921, for the Borough of Monroe, Bradford County.

(2) South Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of Towanda, Bradford County.

[fol. 130] (3) North Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of North Towanda, Bradford County.

(4) West Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of West Burlington, Bradford County.

(5) Ulster Township Electric Company, which received letters patent dated September 19, 1923, for the Township of Ulster, Bradford County.

(6) Rome Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Rome, Bradford County.

(7) Granville Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Granville, Bradford County.

(8) Wysox Electric Company, which received letters patent dated July 12, 1921, for the Township of Wysox, Bradford County.

(9) Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Burlington, Bradford County.

(10) Orwell Township Electric Company, which received [fol. 131] letters patent dated September 15, 1923, for the Township of Orwell, Bradford County.

(11) Sheshequin Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Sheshequin, Bradford County.

(12) Herrick Township Electric Company which received letters patent dated September 11, 1923, for the Township of Herrick, Bradford County.

(13) Franklin Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Franklin, Bradford County.

(14) Powell Electric Company, which received letters patent dated July 12, 1921, for the Township of Monroe, Bradford County.

(15) Asylum Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Asylum, Bradford County.

(16) Burlington Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Burlington, Bradford County.

(17) Rome Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Rome, Bradford County.

[fol. 132] (18) Smithfield Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the township of Smithfield, Bradford County.

(19) Leroy Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Leroy, Bradford County.

(20) Standing Stone Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Standing Stone, Bradford County.

Your petitioner Northern Pennsylvania Power Company has an authorized capital stock of 2,500 shares of 6% Cumulative Preferred Stock, having a par value of $50 each, of which 2,089 shares were outstanding in the hands of the public and 148 shares were in the company's treasury on October 31, 1925; 50,000 shares of $7 Cumulative Preferred stock without nominal or par value, no part of which has been issued; 50,000 shares of $6 Cumulative Preferred stock without nominal or par value, no part of which has been issued; and 100,000 shares of common stock without nominal or par value, of which 2,160 shares were outstanding in the hands of the public on October 31, 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized indebtedness of $10,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $50,000 principal amount of General First and Refunding 6% Gold Bonds of Towanda Gas & Electric [fol. 133] Company secured by mortgage to The Scranton Trust Company as Trustee dated October 1, 1921, of which $1,000 principal amount were in the company's treasury; and $1,000 principal amount of 5% First Mortgage Bonds of Towanda Electric Illuminating Company secured by mortgage to R. F. Page, Trustee, dated April 1, 1913.

6. General balance sheets of your petitioners as of October 31, 1925, and a statement of income and expenses showing the results of the operations of your said petitioners during the year ending on October 31, 1925, are hereto attached, marked Exhibits "A", "B", "C" and "D".

7. A contract has been entered into under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, for the sale by your petitioner North Penn Power Company to your petitioner Northen Pennsylvania Power Company of all of its franchises and property, real, personal and mixed, subject to all its debts, liabilities and duties. The consideration named in said contract is to be paid to the selling company for its stockholders and is as follows:

$50 and accrued dividends in cash for each share of Series A 7% Cumulative Preferred stock of the selling company with the privilege of taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company, with apportionment of dividends thereon.

[fol. 134] $55 in cash for each share of Non-Cumulative Preferred stock, Series B, of the selling company with the privilege of taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company with apportionment of dividends thereon.

9121 shares of the Common stock of the purchasing company for all of the Common stock of the selling company, all the holders of the latter having consented thereto.

Said contract consists of resolutions of the respective Boards of Directors of your petitioners, copies whereof marked Exhibits "E" and "F" are hereto attached. The said contract has been duly approved and ratified by the stockholders of your petitioner, North Penn Power Company as more fully appears by the election return relative thereto heretofore duly filed in the office of the Secretary of the Commonwealth of Pennsylvania.

8. Said sale is desired by the parties hereto because the same interests own the entire common stocks of your petitioners and their respective systems being in the same general locality, it is believed that by interconnecting and operating them under one management, economies can be effected which will at once result in bettering the service and benefitting the consuming public.

9. It is expected that the proposed transaction will materially improve the service now rendered by the parties hereto. The consolidation should result in added financial strength and in the assurance of adequate sources of supply of electric energy which are not always accessible to a small isolated company.

[fol. 135] 10. The price of the franchises and property to be purchased as aforesaid will, so far as the same is payable in cash, be paid by your petitioner Northern Pennsylvania Power Company out of the sale of its bonds and/or stock.

11. The proposed transaction will grant no franchise rights to the purchaser to furnish service in any locality where similar service is being rendered by a public service company other than the selling company or, so far as your

petitioners are informed and believe, where any such other company has charter rights to furnish service.

12. The proposed sale is necessary and proper for the service, accommodation and convenience of the public for the reasons stated in paragraphs 7 and 8 hereof.

Wherefore, your petitioners pray your Honorable Commission to issue a certificate of public convenience under the provisions of Article III., Section 3(c) and Article V., Sections 18 and 19 of the Public Service Company Law, evidencing its approval of the purchase by your petitioner, Northern Pennsylvania Power Company, of all of the franchises and property of your petitioner, North Penn Power Company, and they will ever pray, etc.

North Penn Power Company, by Lucien H. Tyng, Vice-President. Northern Pennsylvania Power Company, by Lucien H. Tyng, Vice-President.

[fol. 136] EXHIBIT "E" TO PETITION

Resolutions of Board of Directors of North Penn Power Company

Whereas, Northen Pennsylvania Power Company, a Pennsylvania corporation engaged in the same line of business as this company, has offered to purchase the franchises and all the property, real, personal and mixed, of this company, subject to all its debts, liabilities and duties for a consideration payable to this company for its stock holders in cash and/or the capital stock of the purchasing company as follows, to wit:

For each share of Series A 7% Cumulative Preferred Capital Stock of this company issued and outstanding there shall be paid to this company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment of $50 to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital Stock Series B of this company issued and outstanding there [fol. 137] shall be paid to this company for the holders' account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); with the privilege of returning such cash payment to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For all of the issued and outstanding shares of common capital stock of this company, to wit: 12,000 shares without nominal or par value, there shall be issued and delivered to this company for account of the holders of said common stock pro rata, 9121 shares of the common stock of Northern Pennsylvania Power Company without nominal or par value, when, as and if authorized by the stockholders thereof; and

Whereas, it seems desirable to this Board to sell the said franchises and property on the said terms,

Resolved, that the aforesaid offer of Northern Pennsylvania Power Company be and the same hereby is accepted.

Further Resolved, that, the stockholders of this company consenting, the President or Vice President and Secretary or an Assistant Secretary be and they are hereby authorized and directed, upon the payment and delivery to this com- [fol. 138] pany of the aforesaid consideration, to make, execute and deliver a deed of the franchises, and all the property, real, personal and mixed, of the company to Northern Pennsylvania Power Company, its successors and assigns, as the act and deed of this company.

Further Resolved, that a meeting of the stockholders be called to convene at the office of the Company in Blossburg, Pennsylvania, on the 18th day of November, 1925, at 11 o'clock A. M., to take action on approval or disapproval of the proposed sale, assignment, disposition and conveyance of its franchises and all its property, real, personal and mixed, to Northern Pennsylvania Power Company.

EXHIBIT "F" TO PETITION

Resolutions of Board of Directors of Northern Pennsylvania Power Company

Whereas, in the judgment of this Board it is desirable that this company should acquire the franchises and all the property, real, personal and mixed, of North Penn Power Company, a Pennsylvania corporation, and the same are of a value at least equal to the proposed consideration hereinafter mentioned,

Resolved, that this company hereby offers to purchase said franchises and all the property, real, personal and mixed, of said North Penn Power Company, subject to all its debts, liabilities and duties for a consideration payable [fol. 139] to said company for its stockholders in cash and/or stock of this company as follows:

For each share of Series A 7% Cumulative Preferred Capital Stock of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital Stock Series B of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); with the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative preferred stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

[fol. 140] For all of the issued and outstanding shares of common capital stock of said North Penn Power Company, to wit: 12,000 shares, without nominal or par value, there shall be issued and delivered to said company for account of the holders of said common stock pro rata, 9121 shares of the common stock of this company without nominal or par value, when, as and if authorized by the stockholders thereof.

State of New York,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of North Penn Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. William J. White, Notary Public, Queens County. Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 141] State of New York,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of Northern Pennsylvania Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid.
William J. White, Notary Public Queens County. Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 142] PUBLIC SERVICE COMMISSION, COMMONWEALTH OF PENNSYLVANIA

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Petition

Cooke & Marvin, 31 Nassau Street, New York

EXHIBIT "B" TO STIPULATION OF FACTS

First Mortgage Five Per Cent Gold Bonds

THE NEW JERSEY POWER & LIGHT COMPANY

to

GUARANTY TRUST COMPANY OF NEW YORK, as Trustee

First Mortgage

Dated February 1, 1916

This Indenture of Mortgage, made and entered into this first day of February, in the year one thousand nine hundred [fol. 143] and sixteen, by and between The New Jersey Power & Light Company, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter referred to as the "Company"), party of the first part, and Guaranty Trust Company of New York, a corporation duly organized and existing under the laws of the State of New York (hereinafter referred to as the "Trustee"), party of the second part, Witnesseth:

Whereas, the Company owns and possesses the property hereinafter described, together with all franchises, rights, privileges, lands, tenements and hereditaments thereunto belonging and appertaining, and has legal authority to make and execute this mortgage upon all of its property, rights, privileges and franchises hereinafter set forth, and to issue its certain bonds as herein provided; and

Whereas, in order to provide funds for the acquisition of other property and for additions, extensions, improvements and betterments to its property, and to provide for the payment and discharge of its obligations and indebtedness, and for other corporate purposes, the Company by proper action of its stockholders and directors has duly determined to issue and dispose of from time to time its First Mortgage Five Per Cent Gold Bonds (hereinafter called "the bonds") without limit as to amount in substantially the forms and on the terms hereinafter set forth, and to secure the same by the mortgage and pledge of the [fol. 144] property and franchises hereinafter described and by the execution of this mortgage; and

Whereas, the bonds are to be issued either as coupon bonds or registered bonds and the forms of the coupon bonds and the coupons to be attached thereto and of the registered bonds and the Trustee's certificate are to be substantially as follows:

[Form of Coupon Bond]

No. —. $1,000.00.

UNITED STATES OF AMERICA

STATE OF NEW JERSEY

THE NEW JERSEY POWER & LIGHT COMPANY

First Mortgage Five Per Cent Gold Bond

The New Jersey Power & Light Company, a corporation organized under the laws of the State of New Jersey (hereinafter called the "Company"), for value received, promises to pay on the first day of February, in the year one thousand nine hundred and thirty-six (unless before that time this bond shall have been redeemed in accordance with the provisions hereof) to the bearer, or in case this bond be registered, to the registered holder thereof One thousand (1,000) Dollars in gold coin of the United States of America of the present standard of weight and fineness, or its equivalent, and to pay interest thereon, until said [fol. 145] principal sum has been fully paid, at the rate of five (5) per cent. per annum, in like gold coin, semi-annually on the first days of February and August in each year, on presentation and surrender of the interest coupons hereto annexed as they respectively become due. Both the principal and interest of this bond are payable at the office or agency of the Company in the Borough of Manhattan in the City of New York, State of New York, and without deduction for any tax, assessment or governmental charge (except the federal income tax imposed by the Act of Congress approved October 3, 1913), which the Company or the Trustee under the mortgage hereinafter mentioned may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America or any state, territory, county, municipality or other taxing authority therein.

This bond is one of an issue of bonds, the payment of which with interest as aforesaid is equally secured without preference, priority or distinction as to lien or otherwise of one bond over another, by a mortgage dated February first, one thousand nine hundred and sixteen, executed by the Company to Guaranty Trust Company of New York, as Trustee, to which mortgage reference is hereby made for a statement of the nature and extent of the security and the terms and conditions upon which the bonds are issued and held.

No recourse shall be had against any stockholder, director or officer of the Company for the payment of this bond or the interest thereon, all such recourse being by the [fol. 146] acceptance hereof expressly waived as in said mortgage provided.

The principal of this bond may be declared or become due and payable in the manner and with the effect provided in said mortgage in case of the happening of an event of default as therein provided.

The Company will establish and maintain two separate funds, one to be known as the Sinking and Improvement

Fund and the other as the Maintenance and Depreciation Fund, as set forth in said mortgage.

All or any of the bonds issued under the above mentioned mortgage are subject to redemption at one hundred and five (105) per cent. of their principal amount, and accrued interest on any interest day in the manner provided in said mortgage.

This bond shall pass by delivery unless registered in the name of the owner on the books of the Company at its office or agency in the Borough of Manhattan, City of New York, such registration being noted on the bond. After such registration no transfer shall be valid unless made on such books by the registered owner in person or by his attorney duly authorized and similarly noted on the bond, but the same may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons which shall continue to be transferable by delivery.

Coupon bonds may, as provided in said mortgage, be [fol. 147] exchanged for registered bonds of the denomination of One thousand (1,000) Dollars, or any multiple thereof, upon the surrender of such coupon bonds, together with all unmatured coupons thereto belonging to an aggregate principal amount equal to the principal amount of registered bonds to be received in exchange. Each registered bond issued in lieu of or in exchange for a coupon bond or bonds shall have endorsed thereon the number or numbers of the coupon bond or bonds in lieu of or in exchange for which such registered bond is issued, and such registered bonds, as provided in said mortgage, may in turn be exchanged for coupon bonds, but in either case only upon payment, if the Company shall require it, of the transfer charges therein provided for.

This bond shall not be binding upon the Company unless the certificate endorsed hereon has been signed by the Trustee under said mortgage.

In Witness Whereof, The New Jersey Power & Light Company has caused this bond to be signed by its President or Vice-President and its incorporate seal to be hereunto affixed and attested by its Secretary or Assistant

Secretary, and has caused the coupons hereto annexed to be authenticated by the facsimile signature of the Treasurer, this first day of February, in the year one thousand nine hundred and sixteen.

The New Jersey Power & Light Company, by —— ——, President.

Attest: —— ——, Secretary.

[fol. 148]

Article Second

Issue of Bonds

Section 1. Bonds of the aggregate principal amount of Five hundred and fifty thousand (550,000) Dollars shall forthwith upon the execution hereof be certified by the Trustee and delivered to or upon the written order of the President or a Vice-President of the Company.

Section 2. After the certification and delivery of the bonds referred to in Section 1 of this Article, additional bonds shall be certified by the Trustee and delivered to the Company from time to time for the following purposes:

(a) The payment of absolute money liabilities incurred or the reimbursement of moneys actually expended by the Company since February 1, 1916, for or to aid in the acquisition by the Company of any additional electric light and power, gas or other public utility plant or system.

(b) The payment of absolute money liabilities incurred or the reimbursement of moneys actually expended by the Company since February 1, 1916, for the construction or acquisition of additions, extensions, improvements and betterments of or to any of the properties now owned by the Company, or of or to any public utility plant or system hereafter acquired by the Company upon which this mortgage shall at the time be a first lien.

Section 3. Bonds issued under Section 2 of this Article shall be certified and delivered at the following rates:

[fol. 149] (a) For the acquisition of any property referred to in the subdivision (a) of said Section 2, bonds may be certified and delivered at the rate of Eight hundred (800) Dollars face amount of bonds for every One thousand (1,000) Dollars of expenditures made or liabilities incurred for such purpose, as stated in the certificate hereinafter provided for under Section 5 of this Article; but if such expenditures or liabilities exceed the replacement value of such property as set forth in the engineer's report hereinafter provided for in Section 5 of this Article, then only at the rate of Eight hundred (800) Dollars face amount of bonds for every One thousand (1,000) Dollars of such replacement value.

(b) For the construction or acquisition of additions, extensions, improvements and betterments of or to the property of the Company, or of or to any public utility plant or system hereafter acquired by the Company under subdivision (b) of Section 2 of this Article upon which this mortgage is a first lien, bonds may be certified and delivered at the rate of Eight hundred (800) Dollars face amount of bonds for every One thousand (1,000) Dollars of expenditures and liabilities incurred for such purposes, as stated in the certificate hereinafter provided for in Section 5 of this Article.

Section 4. The Company at any time and from time to time, in lieu of obtaining the certification and delivery of bonds for the payment or reimbursement of particular liabilities or expenditures of the character mentioned in said Section 2 of this Article, may sell for cash any of [fol. 150] the bonds, and upon the delivery to the Trustee of the resolution and certificate hereinafter referred to, and the cash representing the proceeds of the sale of such bonds, the Trustee shall certify and deliver to or upon the order of the Company, bonds to the aggregate principal amount called for by said resolution. The resolution and certificate shall be as follows:

(a) A certified copy of a resolution of the Board of Directors of the Company calling for the certification and delivery of a specified principal amount of bonds to be certified and delivered under the provisions of this Section 4, and setting forth that the amount of bonds so requested to be certified and delivered have been sold at a specified net price;

(b) A certificate signed by the President or Vice-President, and the Treasurer or Assistant Treasurer, of the Company, certifying to the truth and accuracy of the recitals contained in said resolution;

provided, however, that no bonds shall be delivered under this Section 4 to an amount which will cause the total proceeds from the sale of bonds at the time held by the Trustee under this Section 4 to be at any time in excess of Five hundred thousand (500,000) Dollars.

The moneys so deposited with the Trustee are herein referred to as "deposited moneys" and shall at all times be subject to the lien hereof until paid out as hereafter provided.

Such deposited moneys shall be paid out as follows: The [fol. 151] proceeds of each Eight hundred (800) Dollars face amount of bonds so sold shall be paid to the Company, at its option, in lieu of the certification and delivery of each Eight hundred (800) Dollars face amount of bonds which might otherwise be certified and delivered under the terms hereof. If at any time the then deposited moneys shall have been derived from sales of bonds at different prices, all of the bonds from which said deposited moneys shall have been derived shall for the purposes of this Section be deemed to have been sold at the average price per bond realized by all such sales.

Section 5. Prior to the certification and delivery of bonds under Section 2 of this Article or the payment of deposited moneys under Section 4 of this Article, there shall be delivered to the Trustee, in every case:

First. A certified copy of a resolution of the Board of Directors of the Company calling for the certification and delivery of a specified amount of bonds or for the payment of a specified amount of deposited moneys for one or more of the purposes specified in clause (a) or clause (b) of Section 2 of this Article, and, unless required for the reimbursement of the Company in respect of previous expenditures, directing the officers of the Company to set aside such specified amount of bonds or their proceeds or such specified amount of deposited moneys (as the case may be) separate and apart from all other assets and funds of the Company and to use the same only for the particular purpose specified in such resolution.

[fol. 152] Second. A report signed by the President or a Vice-President and Treasurer or an Assistant Treasurer of the Company, showing that the net earnings of the Company for any period of twelve months ending not more than two months before the first day of the then current month have been at least twice the sum of (a) the annual interest on all bonds secured hereby outstanding at the time of such report; (b) the annual interest on all bonds secured hereby which shall not have been certified and delivered but the certification and delivery whereof has previously been called for, and (c) the annual interest on all bonds secured hereby for the certification and delivery whereof application shall then be made; provided, however, that said report shall not be required prior to or as a condition of the certification and delivery of the first One hundred and fifty thousand (150,000) Dollars face amount of bonds certified and delivered after certification and delivery of the bonds mentioned in Section 1 of this Article.

The net earnings of the Company for the purpose of such report shall consist of the gross earnings of the Company derived from property owned by the Company subject to the lien of this mortgage (not including, however, any property hereafter acquired by the Company and which at the time of such report shall be subject to a lien prior to the lien of this mortgage), less all operating expenses, including as part of such expenses taxes of every kind, insurance and adequate expenditures for repairs and maintenance.

In the event that application for the certification and delivery of bonds or the payment of deposited moneys is made [fol. 153] for the purpose of acquiring new property having earnings, the net earnings of such property, calculated in the manner aforesaid, for the period of twelve months covered by said report shall be treated as a part of the net earnings of the Company for such period.

Third. A certificate signed by the President or a Vice-President and by the Treasurer or an Assistant Treasurer of the Company, stating (a) that specified amounts of money have been actually expended since February 1, 1916, or that absolute money liabilities to a stated amount have been actually incurred since February 1, 1916, or both, by the Company for one or more of the purposes specified in clause (a) or clause (b) of Section 2 of this Article, briefly describing the particular additions, extensions, improvements and betterments to the properties of the Company or the additional properties, plants or systems acquired or contracted for by it and specifying the amount of money actually expended and the money liabilities actually incurred for each of such purposes; (b) that the amounts of money actually expended or the liabilities actually incurred for such additions, extensions, improvements and betterments to the property of the Company, or for such additional properties, plants or systems, were not in excess of the fair value of the work done or contracted for or the property acquired or contracted for, and that none of such expenditures or liabilities was included in any previous certificate furnished under this section or was made or reimbursed or provided for out of any bonds delivered or any moneys paid to or upon the order of the [fol. 154] Company under any provision of this mortgage, or out of the Sinking and Improvement Fund, or out of the Maintenance and Depreciation Fund, hereafter referred to in this mortgage, or out of any insurance money received by reason of any loss by fire to any property of the Company, or out of moneys received from the sale or condemnation of any property of the Company; that none of such expenditures was so made or liabilities was so incurred to restore any property of the Company damaged or destroyed by fire, and that the expenditures so made or liabilities so incurred have not been reported or treated, and should not be reported or treated, as expenditures for operation, renewals, replacements and ordinary maintenance; (c) that all bonds theretofore delivered and all deposited moneys theretofore paid out by the Trustee for the purpose of discharging any liability, as in this mortgage provided, have been used for the purpose of discharging such liability or that such bonds or their proceeds or such deposited moneys (as the case may be), or so much thereof as shall not have been so used, are still set aside and reserved for the purpose of discharging such liability, or that such bonds or their proceeds, or such deposited moneys (as the case may be), or so much thereof as shall not be stated to have been so used or to be so reserved, are therewith returned and delivered to the Trustee; (d) that none of the additions, extensions, improvements and betterments to the property of the Company, or any properties, plants or systems acquired or contracted for, are known or believed to be, or upon their acquisition by the Company will become, subject to any lien or charge prior [fol. 155] to the lien of this mortgage excepting any lien or liens for taxes levied against such property which are not overdue and undetermined liens or charges incident to the construction of such property.

Fourth. Also, in case said bonds or deposited moneys are desired for any of the purposes set forth in clause (a) of Section 2 of this Article, a written report signed by an engineer appointed by the Company and approved by the Trustee, stating in substance that said engineer has examined personally or through a competent assistant such plants or systems and that the replacement value thereof is in the judgment of such engineer a specified sum. In ascertaining such replacement value such engineer shall satisfy himself in respect thereof in any manner and by any means he may deem reasonable and proper, but shall not include in such value any rights or privileges granted through ordinance or otherwise by any municipality or other public authority or any element of good will or going value attaching to any of such properties or to any business conducted in whole or in part thereby.

The term "engineer," as used in this paragraph, shall include any firm of engineers or any corporation having engineers in its employ which is engaged in the business of investigating and reporting upon public utility properties. The engineer so approved by the Trustee may be an engineer who at the time is in the employ of the Company.

Fifth. The Company covenants and agrees that it will execute or cause to be executed and delivered to the Trustee, [fol. 156] in respect to any properties, plants or systems, or parts thereof, on account of the acquisition whereof the Company shall have obtained the certification and delivery of bonds or the payment of deposited moneys under this Article, any and all deeds and instruments of transfer conveying, assuring and confirming to the Trustee such properties, plants or systems, or parts thereof, necessary in the opinion of counsel approved by the Trustee (who may be counsel for the Company) to subject said properties, plants or systems, or parts thereof, to the lien of this mortgage; or, in lieu of such deeds or instruments of transfer, the Company will deliver to the Trustee the opinion of such counsel that no deeds or instruments of transfer are necessary for such purpose.

Section 6. The written orders, resolutions, opinions, reports, statements and other instruments provided for in this Article may be received by the Trustee as conclusive evidence of anything pertaining to the right to certify and deliver bonds or to pay out deposited moneys pursuant to this Article and without further inquiry by it shall be deemed and taken to be full authority and protection to the Trustee for its certification and delivery of such bonds or the payment of such moneys under the foregoing provisions of this Article. The Trustee, however, if requested in writing by ten (10) per cent in amount of the outstanding bonds and furnished by them with indemnity satisfactory to it, before certifying and delivering any bonds or paying out deposited moneys on the faith of any certificate or re- [fol. 157] port furnished under the provisions of this Article, shall make further inquiry with regard to any statement or statements contained therein, and shall then be entitled to examine, through any agent or agents it may select, the books and records of the Company, and to make other investigation with respect to any statement contained in such certificate or report. The decision of the Trustee thereupon shall be binding and conclusive on all the parties.

Section 7. No bonds shall be certified under this Article Second, unless there shall have first been delivered to the Trustee (a) a certified copy of an order of the Board of Public Utility Commissioners of the State of New Jersey, or other analogous board or authority having jurisdiction in the premises, authorizing or consenting to the issue of the bonds which the Trustee is then requested to certify.

Article Third

Redemption and Purchase of Bonds

Section 1. All or any of the bonds may be redeemed by the Company on any interest day at one hundred and five (105) per cent of their principal amount, and accrued interest to the day of redemption. If the Company shall elect to redeem any or all of said bonds, it shall notify the Trustee, at least forty (40) days prior to the interest day on which it is proposed to redeem said bonds, of the principal amount of bonds which the Company desires to redeem, and shall on or before the redemption date deposit with the Trustee a sum sufficient to redeem said bonds with the [fol. 158] accrued interest thereon to the date of redemption.

Notice of the Company's intention to redeem said bonds shall be given by publication in a newspaper of general circulation published in the Borough of Manhattan, City of New York, once a week for four successive calendar weeks (in each case on any day of the week) prior to the date of redemption, the first publication to be made not less than thirty nor more than forty days prior to such redemption date. Such notice shall also state that the interest on the bonds to be redeemed will cease on the next ensuing interest date and shall require such bonds to be then presented for payment and redemption at the office of the Trustee. If any of the bonds to be redeemed are registered bonds, or coupon bonds registered as to principal, a copy of said notice shall be mailed at least four (4) weeks before the date of redemption, to the registered holder at his address appearing upon the bond registry books. If the Company shall elect to redeem less than all of the bonds then outstanding, the Trustee shall draw by lot from the issue numbers of all outstanding bonds, bonds up to the principal amount of bonds which the Company so desires to redeem, using in the case of registered bonds the numbers of the reserved coupon bonds endorsed thereon.

Such notice shall specify the bonds so drawn for redemption by their issue numbers as the bonds called for redemption on said redemption date, and shall also specify in the case of registered bonds, both the numbers of such registered bonds and the issue numbers of the coupon bonds held in reserve therefor, and if the numbers of all coupon [fol. 159] bonds held in reserve against any registered bond shall not have been drawn, so that less than the principal amount of such registered bond shall be redeemable, that upon presentation of such registered bond for redemption a new bond or bonds, either coupon or registered or both, as the holder shall elect, will be issued in lieu of the unredeemed portion of the principal amount thereof.

Section 2. If on or before such redemption date the Company shall deposit with the Trustee a sum sufficient for the redemption of the bonds that shall have been called for redemption in the published notice, such bonds so called for redemption shall be considered redeemed and they shall become and be payable on and after the date of redemption specified in such notice at the office of the Trustee at one hundred and five (105) per cent of their face value, together with interest due thereon on such date. On and after the redemption date specified in such notice the Trustee shall take up and pay at the rate aforesaid, out of the moneys which shall be so deposited by the Company, the bonds which shall have been specified in such notice as called for redemption including interest maturing on the redemption date. Such payment by the Trustee of the sum payable for principal and for premium on each coupon bond called for redemption shall be made to the bearer of such bond, unless it shall then be registered, in which case such payment shall be to the registered holder or his assigns, but in either case only upon the surrender of such bond and of all coupons for interest thereon unmatured [fol. 160] at the date of redemption specified in the published notice. The sum so due and payable on the registered bonds without coupons for principal and premium and for accrued interest, shall be paid to the registered holder of such bonds or to their assigns under a duly executed instrument of assignment, but in every case only upon surrender of the bonds. All unpaid interest instalments represented by coupons which shall have matured on or prior to the date of redemption specified in the notice shall continue to be payable to the bearers, severally and respectively. Upon surrender of a registered bond whereof a portion only of the principal amount is to be redeemed, the Company, without charge therefor, shall issue and the Trustee shall certify and deliver new coupon bonds or new registered bonds, as the holder shall elect, equal in face amount to the portion of such registered bond not so redeemed, in lieu of the unredeemed portion of the principal amount of the bond so surrendered.

From and after the redemption date when any bonds called for redemption become payable as aforesaid, the moneys deposited by the Company for the payment and redemption thereof shall be held by the Trustee upon said trust for the payment of such bonds in the manner specified, and from and after such redemption date, if such moneys shall have been so deposited, no further interest shall accrue upon any such bonds, and any coupons appertaining to such bonds for interest maturing after such date shall become and be null and void, anything in such bonds or in such coupons or in this mortgage to the contrary [fol. 161] notwithstanding, and the holders of such bonds shall be bound to look solely to the funds in the hands of the Trustee for the payment thereof. All bonds so redeemed and paid by the Trustee out of the moneys deposited by the Company as aforesaid shall be cancelled by such Trustee and be delivered to the Company and shall not be reissued.

Section 3. In case the entire issue of bonds shall at any time be called for redemption pursuant to the provisions of this Article, all moneys then held by the Trustee under the provisions of this mortgage shall, upon request of the Company, expressed in a resolution of its Board of Directors, a certified copy whereof shall be delivered to the Trustee, be applied by the Trustee to the redemption and payment of the bonds so called for redemption, and any such moneys in excess of the amount necessary for such redemption and payment shall be payable to the Company.

Section 4. No bonds shall be redeemed under the foregoing provisions of this Article unless the Board of Public Utility Commissioners of the State of New Jersey, or another analogous Board or authority having jurisdiction in the premises, shall have first made its order authorizing and permitting the redemption of such bonds as the Company shall then desire to make.

Section 5. Whenever there shall be any moneys in the Sinking and Improvement Fund, provided for under Article Fifth hereof, applicable to the redemption or purchase of bonds, or whenever the Company shall deposit with the [fol. 162] Trustee hereunder funds for that purpose, offers of bonds may be invited as follows: The Board of Directors of the Company shall pass a resolution setting forth its decision to purchase bonds under offers, the limit of price to be paid therefor, not exceeding however one hundred and five (105) per cent of their face value, and accrued interest, and the amount to be applied from the Sinking and Improvement Fund and/or to be otherwise provided for that purpose.

On receipt by the Trustee of a certified copy of said resolution, and the cash, if any, in addition to the amount to be withdrawn from the Sinking and Improvement Fund to be used for the purpose of purchasing bonds, the Trustee shall then invite offers of bonds in the following manner:

The Trustee shall publish a notice once a week for two successive weeks in a daily newspaper of general circulation published in the Borough of Manhattan, City of New York, the first publication to be not less than fifteen nor more than twenty days prior to the date set for receiving offers therein specified, which notice shall state the amount of moneys then on hand which the Board of Directors of the Company have decided to apply to the purchase of bonds, and shall invite sealed offers to be made for the sale of bonds to the Company on or before the date specified in said notice.

From the bonds so offered for sale, the Trustee shall purchase on behalf of the Company at the lowest price at which the said bonds shall be offered, but at prices not to exceed [fol. 163] the limit set forth in said resolution of the Board of Directors, sufficient bonds to exhaust as far as possible the moneys so applicable to such purchase. If at any time sufficient bonds shall not be offered, in response to any such notice, to exhaust the moneys then applicable to such purchase, the moneys set aside therefor and not so used shall thereupon become part of the Sinking and Improvement Fund, and be held therein subject to further disposition as therein provided, or, at the option of the Company, may be used in the redemption of bonds as provided in this Article. Any bonds purchased under the provisions hereof shall be forthwith cancelled by the Trustee and, upon its written request, delivered to the Company and shall not be reissued.

Article Fifth

Sinking and Improvement Fund

The Company shall establish a fund, to be known as the Sinking and Improvement Fund, and for that purpose will pay to the Trustee hereunder, on the first day of February, 1920, and annually thereafter on the first day of February so long as any bonds secured by this mortgage remain outstanding, a sum in cash equivalent to one (1) per cent of the face value of all bonds issued hereunder and at that time outstanding. All money in the Sinking and Improvement Fund shall be held by the Trustee and paid out by it at the request of the Company as follows:

[fol. 164] (a) It shall be paid to the Company in the same manner and under the same restrictions and for the same purposes as set forth and specified for the payment of deposited moneys, as provided by Article Second hereof, except that such funds may be paid out at the rate of One hundred (100) Dollars of money for each One hundred (100)

Dollars of liability incurred or money expended for such purposes.

(b) It shall be paid out for the purchase or redemption of bonds, as the Company may elect, in accordance with the provisions of Article Third hereof.

Article Fifteenth

Merger

Nothing contained in this mortgage or in any bond hereby secured, shall prevent any lawful purchase by the Company of any other corporation, or any consolidation or merger of the Company with any other corporation, or any conveyance, transfer or lease, subject to the continuing lien of this mortgage, of all the property mortgaged hereunder, to any person or corporation, provided that such consolidation, merger, sale, conveyance, transfer or lease shall be upon such terms as to preserve and not to impair the lien and security of this mortgage, the rights or powers of the Trustee or of the bondholders hereunder.

[fol. 165] State of New York,
County of New York, ss:

Wm. C. Cox, being duly sworn, deposes and says:

That he is a Vice-President of Guaranty Trust Company of New York, the mortgagee above named, and its duly authorized agent in its behalf. That the consideration for the above mortgage is the issue of bonds of the mortgagor for the purposes specially set forth in said mortgage, and that the principal amount due and to grow due thereon, stated as nearly as possible, is Five hundred fifty thousand Dollars ($550,000) face amount of bonds to be issued under and secured by the terms of said mortgage and forthwith to be sold, together with such additional amount of bonds as may be hereafter issued under the terms and in accordance with the provisions of the said mortgage.

(Signed) Wm. C. Cox.

Sworn to and subscribed before me this 3rd day of March, 1916. (Signed) Edwin F. Corey, Commissioner of Deeds for the State of New Jersey, Office No. 59 Wall Street, New York City. (Seal.)

[fol. 166] Before United States Board of Tax Appeals

Docket Nos. 49,079, 52,639, 52,680, 59,469, 59,470

General Gas & Electric Corporation, Petitioner,

v.

Commissioner of Internal Revenue, Respondent

New Jersey Power & Light Company, as Successor by Merger to Newton Gas Company, Petitioner,

v.

Commissioner of Internal Revenue, Respondent

Binghamton Light, Heat & Power Company, Petitioner,

v.

Commissioner of Internal Revenue, Respondent

Francis J. Sweeney, Esq., for the Petitioners.
Chester A. Gwinn, Esq., for the Respondent.

Memorandum Opinion

Disney:

These proceedings were duly consolidated for hearing and [fol. 167] report and involve the redetermination of deficiencies in income taxes as follows:

Petitioner	Docket No.	Year	Deficiency
General Gas & Electric Corporation	52639	1926	$90,169.05
" " " " "	59469	1927	277,903.82
New Jersey Power & Light Co.	49079	1/1/26 to 12/1/26	478.70
Binghamton Light, Heat & Power Co.	52680	1926	34,826.71
" " " " " "	59470	1927	32,898.52

All of the facts have been stipulated.

The General Gas & Electric Company, a Delaware corporation, hereinafter referred to as the petitioner, is, and was at all times material, engaged in the business of holding securities and thus controlling public utility subsidiaries. The petitioners, with their affiliated taxpayers, filed consolidated income tax returns for 1926 and 1927. The affiliated taxpayers included the Susquehanna County Light & Power Co., formerly a Pennsylvania corporation; the North

Carolina Public Service Co., Inc., a North Carolina corporation; the North Penn Power Co., formerly a Pennsylvania corporation; the Northern Pennsylvania Power Co., a Pennsylvania corporation; and the New Jersey Power and Light Co., a New Jersey corporation.

The North Penn Power Co. in 1923 issued and sold its First Mortgage Thirty Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale. The bonds were redeemable at 105 per cent of their face amount on any interest date up to February 1, 1933.

In 1926 the Northern Pennsylvania Power Co., an affili- [fol. 168] ated subsidiary of the petitioner, acquired all of the assets and assumed all of the liabilities of the North Penn Power Co., including its liability on these bonds, which constituted a prior lien on the assets taken over. The principal amount of the bonds outstanding at the time of the transfer was $552,700. Other consideration for the transfer was cash from the transferee for the retirement of the preferred stock of the transferor and common stock of the transferee, which was issued in exchange for common stock of the transferor.

Subsequently in 1926 the Northern Pennsylvania Power Co. retired $368,900 principal amount of the bonds at 105 per cent of their face value, or at a premium of $18,445, plus accrued interest to the date of retirement. In 1927 it retired the remaining bonds, $183,800 face amount, at the same price, or at a premium of $9,190.

On and after December 15, 1913, the Susquehanna County Light & Power Co. issued and sold $600,000 of its first mortgage 6 per cent gold bonds due December 15, 1943, incurring debt discount and expenses incident to the issue and sale. In 1926 the Northern Pennsylvania Power Co. acquired all of the assets and assumed all of the liabilities of the Susquehanna County Light & Power Co., including its liability on all of these bonds, which constituted a prior lien on the assets transferred. Other consideration paid for the assets was preferred and common stock of the transferee, which was exchanged for common stock of the transferor. The Susquehanna County Light & Power Co. had no outstanding preferred stock. In 1926 the Northern Pennsylvania Power [fol. 169] Co. redeemed all of the bonds at 105 per cent of their principal amount, or at a premium of $30,000, in accordance with terms of the trust indenture.

The funds for the retirement of the North Penn Power Co. and the Susquehanna County Light & Power Co. bonds were obtained from the sale in 1926 of $1,950,000 principal amount of Northern Pennsylvania Power Co. first and refunding bonds, Series A, due June 1, 1956.

The unamortized debt discount and expense incurred by the North Penn Power Co. and the Susquehanna County Light & Power Co. in connection with the issuance and sale of the bonds was transferred as a deferred charge asset on the books of the transferee.

At the time of retirement in 1926 by the Northern Pennsylvania Power Co. of $368,900 principal amount of bonds issued by the North Penn Power Co. and $600,000 principal amount of bonds of the Susquehanna County Light & Power Co., the balances of the unamortized debt discount and expense applicable thereto were $70,499.79 and $20,509.51, respectively. The debt discount of $70,499.79 on the $552,700 North Penn Power Co. bonds retired in 1926 and 1927, together with the premiums of $27,635 paid in the redemptions, was not taken as an expense on the books of the Northern Pennsylvania Power Co., but were transferred to debt discount and expense applicable to the refunding issue. Of the amount of $20,509.51 of unamortized debt discount and expense incurred in the issuance and sale of the Susquehanna County Light & Power Co. bonds, in 1926 the Northern Pennsylvania Power Co. deducted $587.40, leaving an unamortized amount of $19,922.11.

[fol. 170] The transfers of assets and liabilities of the North Penn Power Co. and the Susquehanna County Light & Power Co. to the Northern Pennsylvania Power Co. were made under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the Laws of Pennsylvania, with the sanction and approval of the Public Service Commission of Pennsylvania under Section 3 (c) Article III and Sections 18 and 19, Article V of the Public Service Company Law with the issuance of a report, order and certificate of public convenience.

The Piedmont Power & Light Co., formerly a North Carolina corporation, in 1919 issued and sold its first mortgage 15 year Sinking Fund Gold 6% series bonds. In 1921 by supplemental indenture it provided for the issuance and sale of a 7 per cent series with the right to convert the 7 per cent series, at the holder's option, into the 6 per cent series upon payment by the corporation of an 8 per cent cash premium at conversion.

In 1924 the North Carolina Public Service Co., Inc., purchased the assets and assumed the liabilities of the Piedmont Power & Light Co., including the mortgage liability under the original and supplemental indenture. In 1925 and 1926 the North Carolina Public Service Co., Inc., incurred debt discount of $6,884.50 by paying an 8 per cent cash premium for the conversion of 7 per cent bonds into 6 per cent bonds. The unamortized portion of this amount in 1926 was $6,017.66.

[fol. 171] On November 1, 1926, $183,700 of the 7 per cent bonds were retired at 105 and $184,100 of the 6 per cent bonds were retired at 103, the premiums paid being $9,185 on the former and $5,523 on the latter. In addition thereto the North Carolina Public Service Co., Inc., paid legal and advertising expenses of $2,112.50 in connection with the redemptions.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding gold 6½ per cent Series A bonds due February 1, 1944, callable on any interest date to and including February 1, 1929, at 107½. In 1926 it redeemed $880,000 (the whole amount outstanding) of the bonds at a premium of $66,000 pursuant to the terms of the indenture, and incurred and paid legal and advertising expenses of $1,846.79 in connection with the retirement. At the time the bonds were retired there existed unamortized debt expenses incurred in connection with the issuance and sale of said bonds in the amount of $16,157.30, of which the respondent amortized $747.79 in 1926, leaving $15,409.51 unamortized in 1926.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding mortgage 6 per cent gold bonds Series B, due May 1, 1954, callable on any interest date on 30 days notice up to and including November 1, 1928, at 105. In 1926 it redeemed $570,500 (the entire amount outstanding) of the bonds at 105 or at a premium of $28,525. The unamortized discount and expense at the time of the retirement was $56,176.48, of which the respondent allowed $489.52 as a deduction in 1926, leaving a balance of $55,686.96.

[fol. 172] The funds used by the North Carolina Public Service Co., Inc., for the redemption of the bonds issued by the Piedmont Power & Light Co. and the bonds issued by it, were from the proceeds of sale of bonds up to October 1, 1926, in the principal amount of $3,125,000.

From 1916 to 1925, inclusive, the New Jersey Power & Light Co., a New Jersey corporation organized in 1915, issued and sold to the public its first mortgage 5 per cent gold bonds, due February 1, 1936, of the face amount of $2,689,000 for $2,315,635, or at a total discount of $373,365. In 1927 it retired all of the outstanding bonds, amounting to $2,087,000, at 105 in accordance with the terms of the indenture under which they were issued, thereby paying a premium of $104,350. The funds for the retirement of the bonds were obtained from the sale on December 29, 1926, of $6,000,000 principal amount of New Jersey Power & Light Co. 5 per cent first mortgage bonds due August 1, 1936. None of the bonds redeemed were held by corporations affiliated with the petitioners. At the time the bonds were redeemed the unamortized debt discount and expense incurred in connection with their issue amounted to $179,687.23, of which the respondent allowed $9,470.42 as amortization over the life of the new issue of bonds, leaving a balance of $170,216.81.

The parties to these proceedings have stipulated that there is no deficiency or overpayment of income tax in Docket No. 49,079, involving the New Jersey Power & Light Co. as successor by merger to the Newton Gas Co. and that there is a deficiency of $6,876.77 in income tax against the [fol. 173] Binghamton Light, Heat & Power Co., Docket No. 52,680, for the period January 1, 1926, to April 30, 1926. Decisions will be entered accordingly.

Appropriate agreements have been entered under which the income tax liability of each of the petitioners for the taxable years is to be paid by the General Gas & Electric Corporation, the parent corporation. The stipulations of the parties settle all of the issues raised by the pleadings except the question of whether the several amounts shown above as unamortized debt discount and expense at the time the bonds were retired, less amounts allowed by the respondent, and premiums and legal and advertising expenses incurred in connection with the redemptions, are deductible from gross income of the respective corporations which retired the securities. The question involves items relating to bonds issued in the first instance by the redeeming corporation and securities of other corporations assumed by the redeeming corporation.

Bonds of Redeeming Corporations

Under this subdivision of the issue, the following amounts are claimed as deductions from gross income of the corporations which issued and redeemed the bonds:

		Bonds	Premiums	Retirement Expense	Unamortized debt Discount & Expense
North Carolina Public Service Co., Inc.	1926	$880,000	$66,000	$1,846.79	$15,409.51
	"	570,500	28,525	....	55,686.96
New Jersey Power & Light Co.	1927	2,087,000	104,350	....	170,216.81

The respondent elected not to argue the question in view [fol. 174] of the holdings of this Board and the courts contrary to the position he has taken. The deductibility of the premiums and unamortized debt discount is controlled by Metropolitan Edison Co., 35 B. T. A. — (No. 143), and the cases cited therein on the first question, and the expense incurred in retiring the bonds is ruled by Coast Counties Gas & Electric Co., 33 B. T. A. 1199. Following those cases the claimed deductions are allowed.

Bonds Assumed by Redeeming Corporations

This point involves the deduction of premiums, retirement expense and unamortized debt discount and expense relating to bonds of the North Penn Power Co. and the Susquehanna County Light & Power Co. assumed and subsequently redeemed by the Northern Pennsylvania Power Co. and bonds issued by the Piedmont Power & Light Co. which were assumed and retired by the North Carolina Public Service Co., Inc., as follows:

			Bonds	Premiums	Retirement Expense	Unamortized Debt Discount and Expense
Northern Pennsylvania Power Co.:						
North Penn Co. bonds............	1926		$368,900	$18,445	....	$47,058.08
	1927		183,800	9,190	....	23,441.71
Susquehanna Co. bonds............	1926		600,000	30,000	....	19,922.11
North Carolina Public Service Co., Inc.:						
Piedmont Co. bonds.	1926	7%	183,700	9,185)	....	....
		6%	184,100	5,523)	2,112.50	6,017.66

The right to deduct the premiums paid to retire the bonds is decided in favor of the petitioner on the authority of our decision on the third issue in Metropolitan Edison Co., supra. The deductibility of the retirement expense of [fol. 175] $2,112.50 and unamortized debt discount and expense of $6,017.66 incurred in the conversion of 7% bonds into 6% bonds is also decided in favor of the petitioner on the authority of Coast Counties Gas & Electric Co., supra, and our decision on the first issue in Metropolitan Edison Co., supra.

There remains the question of whether a right exists to deduct the unamortized debt discount and expense involved in the bonds assumed by the Northern Pennsylvania Power Co. The issue turns upon the true nature of the transactions.

The transfers were made under the provisions of Section 23 of the General Corporation Act of April 29, 1874, as amended on April 17, 1876, and are classified by the petitioner as the short form of merger under the laws of Pennsylvania. In the transaction with the North Penn Power Co. sufficient cash passed to retire the preferred stock of the transferor, and common stock of the transferee was exchanged for like stock of the transferor. In the deal with the Susquehanna County Light & Power Co. the transferee exchanged its preferred and common stock for the outstanding stock (common only) of the transferor. The transactions were referred to as sales in the resolutions adopted by the boards of directors of the corporations involved and the applications filed with the Public Service Commission of Pennsylvania under the Act, and they were approved by the Public Service Commission as sales.

Facts in all material respects the same, and the identical statutes of Pennsylvania, were involved in the first point in issue V of the Metropolitan Edison Co. case and we held [fol. 176] that the transactions were, in effect, sales, not statutory mergers. On the authority of that decision the respondent is sustained on this point.

Decision will be entered under Rule 50.

Enter.

—— ——.

Entered June 3, 1937.

Before United States Board of Tax Appeals, Washington

Docket No. 59,469

General Gas & Electric Corporation, Petitioner,

v.

Commissioner of Internal Revenue, Respondent

Decision

Pursuant to the Memorandum Opinion of the Board entered on June 3, 1937, the respondent herein having on August 13, 1937, filed a motion together with a proposed recomputation and the petitioner having on August 20, 1937, acquiesced therein, now, therefore, it is
[fol. 177] Ordered and Decided: That there is a deficiency in income tax for the year 1927 in the amount of $3,164.80.

Enter.

Entered, Aug. 24, 1937.

(S.) Bolon B. Turner, Member. (Seal.)

In United States Circuit Court of Appeals for the Second Circuit

[Title omitted]

Petition for Review—Filed November 20, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes the appellant (hereinafter referred to as petitioner), the General Gas and Electric Corporation, a corporation organized and existing under the laws of the State [fol. 178] of Delaware, by its undersigned attorneys and respectfully shows:

I. Jurisdiction for Review

This is a proceeding for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals entered August 24, 1937, Docket No. 59,469, determining a deficiency in income tax of the petitioner for the year 1927

The petitioner is a corporation duly organized and existing under the laws of Delaware, with its principal office and place of business in Wilmington, Delaware.

The respondent on review (hereinafter sometimes referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States of America.

The return of the tax in respect of which the asserted liability arises was filed with the United States Collector of Internal Revenue for the Second District of New York whose office is located within the Judicial Circuit of the United States Circuit Court of Appeals for the Second Circuit.

Review of the said decision of the Board of Tax Appeals is sought by the petitioner in the United States Circuit Court of Appeals for the Second Circuit.

II. Nature of the Controversy

The respondent determined against the petitioner for the taxable periods under review deficiencies in income tax for [fol. 179] the calendar year 1926 in the amount of $90,169.05 and for the calendar year 1927 in the amount of $277,903.82 and duly sent to petitioner notice of said deficiencies. Thereafter, petitioner duly filed its petition for the redetermination of the said asserted deficiencies with the United States Board of Tax Appeals (hereinafter referred to as the "Board"). The respondent duly filed his answer to said petition and trial was had. On June 3, 1937, the Board promulgated its report and opinion, and on August 24, 1937, entered its order redetermining the deficiencies, and deciding that there was a deficiency in the amount of $24.21 for 1926 and a deficiency of $3,164.80 for 1927.

III. The Matters in Controversy

The matter for decision in this controversy is whether the petitioner is entitled to deduct in a consolidated return duly filed with the Northern Pennsylvania Power Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and other corporations, the unamortized debt discount and expense remaining after the retirement by the Northern Pennsylvania Power Company of the bonds of the North Penn Power Company and the Susquehanna County Light and Power Company. By agreement pursuant to law, the petitioner and each of the affiliated corporations agreed that the entire tax liability of the affiliated group of corporations is to be assessed against and paid by petitioner, the General Gas and Electric Corporation.

[fol. 180] The petitioner maintains that in the consolidated returns it was entitled to the deduction with respect to said unamortized discount and expense. The respondent takes the position that the Northern Pennsylvania Power Company, a wholly owned subsidiary of the petitioner acquired the bonds of North Penn Power Company and Susquehanna County Light and Power Company by purchase and is not entitled to deduct such bond discount and expenses.

In support of this petition, it is the petitioner's position that the Northern Pennsylvania Power Company acquired the bonds through merger and assumed the obligations therefor by virtue of the operation of law pursuant to Section 23 of the General Corporation Act of Pennsylvania of April 29, 1874, as amended April 17, 1876, under what is designated herein as a short form merger.

The Board of Tax Appeals held that the bonds came into the possession and ownership of the Northern Pennsylvania Power Company by virtue of purchase, the Board apparently assuming that if they had been acquired as the result of statutory merger the petitioner would be entitled to the deductions claimed.

The North Penn Power Company in 1923 issued and sold its First Mortgage 30-Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale of the bonds. In 1926 the Northern Pennsylvania Power Company, an affiliated subsidiary of the petitioner, asquired all of the assets, properties and franchises and assumed all of the liabilities of the North [fol. 181] Penn Power Company, including its liability on these bonds which constituted a prior lien on the assets taken over under, pursuant to, and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the sanction and approval of the Public Service Commission.

In 1926 the Northern Pennsylvania Power Company retired $368,900 principal amount of said bonds and in 1927 $183,800, principal amount thereof.

The unamortized debt discount and expense with respect to the bonds retired in 1926 was $47,058.08 and with respect to those retired in 1927 the unamortized debt discount and expense was $23,441.71. These amounts petitioner claims should be allowed as a deduction to the Northern Pennsylvania Power Company and allowed as a deduction in the consolidated return.

In 1926 the Northern Pennsylvania Power Company also acquired under, pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the approval and sanction of the Public Service Commission, all the assets, properties and franchises, and assumed all the liabilities of the Susquehanna County Light and Power Company including the liability of the first mortgage bonds issued by the latter company which constituted a prior lien upon the assets so transferred. The Susque- [fol. 182] hanna County Light and Power Company was organized under the laws of Pennsylvania in 1913 as a public utility. On and after that date the said company issued and sold $600,000 of its first mortgage 6% gold bonds due December 15, 1943, incurring debt discount and expense incident to such issue and sale. In 1926 the Northern Pennsylvania Power Company redeemed the entire issue of the said bonds and retired the same. At the date of redemption there remained $19,922.11 unamortized debt discount and expense with respect to the issuance and sale of the bonds of the Susquehanna County Light and Power Company. Petitioner herein claims a right in the consolidated return to deduct from the gross income of the Northern Pennsylvania Power Company for 1926 the said unamortized debt discount and expense.

Petitioner's contention is that under the law of Pennsylvania the assets of the North Penn Power Company and Susquehanna County Light and Power Company were acquired and their liabilities assumed by operation of law as a result of a merger under the aforementioned statute which is commonly known as the short form merger under the laws of Pennsylvania.

IV. Findings of the Board

All of the facts in the case either being stipulated or admitted in the answer or shown in the exhibits duly filed and attached to the stipulation, the Board made no independent findings of fact, but adopted the facts there shown. The Board, however, reached the ultimate conclusion that the assets of the North Penn Power Company and the Susque- [fol. 183] hanna County Light and Power Company were acquired by the Northern Pennsylvania Power Company through purchase and sale and not as the result of a merger under the law of Pennsylvania. Based upon this ultimate finding the Board decided that the Northern Pennsylvania Power Company was not entitled to the deduction with respect to the unamortized debt discount and expense upon the retirement of the assumed bonds.

V. Assignments of Error

The petitioner says that, in the decision and order of the Board redetermining the said deficiencies, manifest error occurred and intervened to the prejudice of the petitioner and the petitioner assigns the following errors upon which it relies to reverse the said decision and order so rendered and entered by the Board, each and every assignment of error being severally and distributively applicable to the deficiency determined, decided and adjudicated against petitioner for the taxable years 1926 and 1927, viz.:

(1) The Board erred in failing to decide as a matter of law that the assets of the Susquehanna County Light and Power Company and the North Penn Power Company were acquired by the Northern Pennsylvania Power Company as a result of merger under the laws of Pennsylvania.

(2) The Board erred in holding that the petitioner was not entitled to the deduction claimed with respect to the [fol. 184] unamortized debt discount and expense with respect to bonds of the North Penn Power Company and the Susquehanna County Light and Power Company assumed by it.

(3) The Board erred in determining that there were any deficiencies due from the petitioner for the taxable periods involved.

(4) The Board erred in not determining that there were overpayments of taxes for the periods involved.

Wherefore, the petitioner prays that the decision and order of the United States Board of Tax Appeals be reversed by the United States Circuit Court of Appeals for the Second Circuit; that a transcript of the record be prepared in accordance with law and the rules of the said Circuit Court of Appeals and be submitted to the Clerk of the said Court for filing and that appropriate action be taken to the end that the decision complained of be reviewed and the errors complained of be corrected and the said decision be reversed by said Court.

Respectfully submitted, C. M. Trammell, Bradford S. Magill, Francis J. Sweeney, Attorneys for Petitioner.

[fol. 185] *Duly sworn to by Charles M. Trammell. Jurat omitted in printing.*

[fol. 186] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

NOTICE OF FILING PETITION FOR REVIEW—Filed Nov. 20, 1937

To the Chief Counsel, Bureau of Internal Revenue, United States Treasury Department:

You are hereby notified that on the 20th day of November, 1937, appellant, General Gas & Electric Corporation, did file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board of Tax Appeals heretofore rendered in the above entitled case. A copy of the petition for review and assignments of error, as filed, is attached hereto and served upon you.

Dated, this 20th day of November, 1937.

C. M. Trammell, Attorney for Appellant.

[fol. 187] Copy of the foregoing notice, together with copy of the petition for review has been received this 20th day of November, 1937, and service thereof is hereby accepted.

J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

PRÆCIPE FOR RECORD—Filed November 20, 1937

To the Clerk of the United States Board of Tax Appeals:

You will please prepare within sixty (60) days from the date of the filing of the petition for review in the above- [fol. 188] entitled proceeding, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit copies duly certified as correct, of the following documents:

1. Docket entries of proceedings before the Board of Tax Appeals.
2. Pleadings before the Board, including copy of notice of deficiency attached to petition.
3. Stipulation of facts filed with the Board of Tax Appeals, together with exhibits attached thereto and made a part thereof.
4. Opinion and decision of the Board.
5. Petition for review and assignments of error, together with proof of service of notice of filing petition for review and assignments of error.
6. This præcipe, together with proof of service thereof.

C. M. Trammell, Attorney for Petitioner.

Service of a copy of the within præcipe is hereby admitted this — day of November, 1937.

J. P. Wenchel, Attorney for Respondent on Review.

[fol. 189] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 190] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1937

Argued May 12, 1938. Decided July 18, 1938

Nos. 221, 222

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from Board of Tax Appeals

Before Manton, Swan, and Chase, Circuit Judges

Petitions by General Gas & Electric Corporation to review orders of the Board of Tax Appeals determining deficiencies in income taxes for the years 1926 and 1927. Affirmed.

William H. S. Wells, of Philadelphia, Pa., Francis J. Sweeney and C. M. Trammell, both of Washington, D. C., and Maurice Bower Saul of Philadelphia, Pa. (Saul, Ewing, Remick & Saul, of Philadelphia, Pa., of counsel), for petitioner.

James W. Morris, Asst. Atty. Gen. (Sewall Key and Lee A. Jackson, Sp. Assts. to Atty. Gen., of counsel), for respondent.

SWAN, Circuit Judge:

Two proceedings, one involving income taxes for the year 1926, the other for 1927, and presenting a common question of law, were consolidated for hearing before the Board. The petitions for review have been similarly consolidated before this court. The petitioner, General Gas & Electric Corporation, has agreed to pay the taxes — its affiliate, Northern Pennsylvania Power Company. The issue in controversy is as to the latter's taxes for the years 1926 and 1927, and this turns on whether it is entitled to deduct the unamortized bond discount and expense of two corporations whose assets and liabilities were taken over by it and whose bonds it retired before maturity during the years in question. The commissioner disallowed the deductions, and the Board sustained his ruling.

There is no dispute in the facts, which were stipulated. In 1923 North Penn Power Company, a Pennsylvania corporation, issued and sold its first mortgage bonds, due February 1, 1953, at a discount and incurred expense in connection with their issue and sale. In 1926 it transferred all its assets, property and franchises to Northern Pennsylvania Power Company, also a corporation of Pennsylvania, and that company assumed all the liabilities of the transferor, including liability on the aforesaid bonds which constituted a prior lien on the assets transferred. As consideration for the transfer, the transferee, in addition to assuming the transferor's liabilities, gave cash for retirement of the transferor's preferred stock, and shares of the transferee's common stock, which were exchanged for the common stock of the transferor. The transfer was made under section 23 of the Pennsylvania General Corporation Act of 1874, as amended by section 5 of the Act of April 17, 1876, 15 P. S. Pa. § 595, and it had the sanction and approval of the Public Service Commission of Pennsylvania. At the date of the transfer there were outstanding first mortgage bonds of the transferor in the principal amount of $552,700. In 1926 the transferee retired $368,900 of these bonds, and in 1927 retired the remaining $183,800 thereof. By transactions similar in all material respects Northern Pennsylvania Power Company likewise acquired the assets and assumed the liabilities of another Pennsylvania corporation, Susquehanna County Light & Power Company, which [fol. 191] had outstanding an issue of first mortgage bonds that the transferee retired in 1926. The funds for the retirement of the North Penn bonds and the Susquehanna bonds were obtained from the proceeds of the sale of $1,950,000 of First and Refunding Bonds, Series A, due June 1, 1956, of Northern Pennsylvania Power Company. The unamortized bond discount and expense incurred respectively by North Penn Power Company and Susquehanna County Light & Power Company in connection with the issuance and sale of their bonds were transferred as a deferred charge asset on the books of Northern Pennsylvania Power Company. Such discount and expense in respect to the bonds retired in 1926 and 1927, respectively, were claimed as deductions in the consolidated income tax returns filed by the petitioner and its affiliates for those years.

It is conceded that unamortized discount and expenses incurred in connection with the issue and sale of bonds are deductions available to the issuing corporation when it pays them off prior to maturity. See Helvering v. Union Pacific R. Co., 293 U. S. 282, 55 S. Ct. 165, 79 L. Ed. 363; Great Western Power Co. v. Commissioner, 297 U. S. 543, 56 S. Ct. 576, 80 L. Ed. 853. It is also not disputed that such items are allowable deductions to a successor corporation which through merger or consolidation has carried forward the corporate identity of the issuing corporation and has succeeded by operation of law to its rights and liabilities. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; New York Central R. Co. v. Commissioner, 2 Cir., 79 F. 2d. 247, certiorari denied 296 U. S. 653, 56 S. Ct. 370, 80 L. Ed. 465; Western Maryland Ry. Co. v. Commissioner, 4 Cir., 33 F. 2d 695. When, however, the successor corporation acquires the assets of the issuing corporation by purchase, rather than by a consolidation or merger, such deductions are not available. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; American Gas & Elec. Co. v. United States, 17 F. Supp. 151, Ct. Cl.; Turner-Farber-Love Co. v. Helvering, 62 App. D. C. 369, 68 F. 2d 416. Whether the transactions at bar are to be classed as mergers or as purchases is the issue in controversy.

The solution of the problem must be sought in the law of Pennsylvania. During 1926, when the transfers under consideration were made, the Pennsylvania statutes authorized two forms of transactions by which the assets and franchises of one corporation might be taken over by another. One statute is the Act of May 3, 1909, 15 P. S. Pa. § 421 et seq., sometimes referred to as the "long form merger"; the other is section 23 of the Act of April 29, 1874, as amended by section 5 of the Act of April 17, 1876, which is sometimes called the "short form merger." See York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. The transfers by which the taxpayer acquired the assets of its transferors and assumed their liabilities were made under the Act of 1874 as amended 15 P. S. Pa. § 595. This provides, so far as material:

> "* * * and it shall be lawful for any corporation * * * to sell, assign, dispose of and convey to any cor-

poration created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: * * *"

It will be observed that the statute speaks in terms of a sale rather than of a merger. It is true that it is provided that the selling corporation "shall cease to exist"; but this has been construed to refer primarily to a cessation of carrying on the business for which the corporation was created. See Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 521, 156 A. 150. It will also be observed that nothing is said as to the liability of the transferee for the debts of the transferor. In the case at bar assumption of liability was accomplished by contract; in the absence of a contractual assumption of debts it would seem that creditors of the transferor could hold the transferee liable only on principles of fraudulent conveyance and to the extent of the value of the assets received. See Merwine v. Mt. Pocono Light & Imp. Co., supra, at page 525, 156 A. 150. In several cases transfers made pursuant to this act have been referred to as purchases and sales. See Greensburg Borough v. Westmoreland Water Co., 240 Pa. 481, 485, 87 A. [fol. 192] 995; Koehler v. St. Mary's Brewing Co., 288 Pa. 648, 653, 77 A. 1016, 139 Am. St. Rep. 1024; Carr v. Rochester Tumbler Co., 207 Pa. 392, 395, 56 A. 945. In other cases, the language of the opinions seems to indicate that a transfer under the 1874 Act is regarded as effecting a merger. Pennsylvania Utilities Co. v. Public Service Comm., 69 Pa. Super. 612, 615; York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. Such characterizations are not conclusive of the present issue. In American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527, this court stated as an essential of such a merger as would entitle the successor corporation to claim deductions of the unamortized bond discount and expense of the merged corporation, that the successor must by operation of law become responsible for the liabilities of the merged corporation. A provision imposing such liability is certainly customary in technical merger statutes; such liability is expressly provided in the "long form merger" Act of

1909, as it is also in the Act of May 5, 1933, 15 P. S. Pa. § 2851—801 et seq. The absence of such a provision in the Act of 1874, and the construction placed upon that statute in Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 156 A. 150, seem to us fatal to the taxpayer's contentions. In that case the plaintiff, a creditor of the selling corporation, moved to substitute the purchasing corporation as a party defendant in an action pending against the seller. The denial of that motion, affirmed by the Supreme Court, shows that under the Act of 1874, the purchasing corporation does not succeed, simply by operation of law, to the liabilities of the seller. Accordingly, we think the case at bar is governed by our decision in American Gas & Elec. Co. v. Commissioner, supra.

Order affirmed.

[fol. 198] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

Before Manton, Swan and Chase, Circuit Judges

Gerald J. Dean, William H. S. Wells, Francis J. Sweeney, C. M. Trammell, Maurice Bower Saul, Attorneys for Petitioner. Saul Ewing, Remick & Saul, of Counsel.

Per CURIAM:

Petitions for rehearing denied.

M. T. M., T. W. S., H. B. C., Circuit Judges.

Filed September 1, 1938.

[fol. 199] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent

(And Another Case)

A petition for a rehearing having been filed herein by counsel for the petitioner;

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 200] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas and Electric Corpn. vs. Commissioner of Internal Revenue. Order. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 201] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

No. 222

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

Wm. Parkin, Clerk, by D. E. Roberts, Deputy Clerk.

[fol. 202] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas & Electric Corpn. vs. Commissioner of Internal Revenue. (No. 222.) Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 203] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 202, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of General Gas & Electric Corporation, Petitioner, against Commissioner of Internal Revenue, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this thirtieth day of November, in the year of our Lord one thousand nine hundred and thirty-eight, and of the Independence of the said United States the one hundred and sixty-third.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 204] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 3, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following the hearing of Nos. 486 and 487.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 42,977, 42,978. U. S. Circuit Court of Appeals, Second Circuit. Term No. 492. General Gas and Electric Corporation, petitioner, vs. Commissioner of Internal Revenue. Term No. 493. General Gas and Electric Corporation, petitioner, vs. Commissioner of Internal Revenue. Petition for writs of certiorari and exhibits thereto. Filed December 1, 1938. Term Nos. 492, O. T., 1938, 493, O. T., 1938.